EXHIBIT 2

in globo

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

IAN POLLARD, on behalf of all himself and all others similarly situated, Plaintiffs, v. REMINGTON ARMS COMPANY, LLC, et al. Defendants.	)	Case No. 4:13-CV-00086-ODS

AFFIDAVIT OF TODD B. HILSEE ON SETTLEMENT NOTICE AND CLAIMS PROCESS AND IN REBUTTAL TO "JOINT RESPONSE"

I, TODD B. HILSEE, have personal knowledge of the matters set forth herein, and I believe them to be true and correct. After being duly sworn under penalty of perjury, I state as follows:

1. This Affidavit is in opposition to the notice and claims process aspects of the settlement and in rebuttal to the Joint Response in Opposition to the Hilsee Group LLC, ECF No. 139, filed August 19, 2016 (the "Joint Response"). The Joint Response contained declarations from two lawyers, Steven Weisbrot (the "Weisbrot Declaration") and Matthew Garretson (the "Garretson Declaration"), (together the "Vendor Declarations")[1] in response to my July 29, 2016

[1] Mr. Weisbrot is an attorney employed by the Angeion Group, which undertook the original 2015 notice plan (the "Original Notice") the result of which led the Court to cancel the fairness hearing and find that the notice process was not effective. Mr. Garretson is an attorney employed by Garretson Resolution Group, who in collaboration with

Amicus letter (the "Hilsee *Amicus* Letter") which is attached hereto as **Exhibit A** to this Affidavit and thus incorporated into this Affidavit.

2. The opinions in this Affidavit and in the Hilsee *Amicus* Letter are based upon the facts stated herein, and are the product of my training, experience, and reliable principles and methods that I have applied to the facts in this case, and which are regularly relied upon by professionals in my field. If I were to testify in Court or elsewhere under oath, my testimony would be the same as that contained herein.

3. Since 1992, many courts have recognized me as a class action notice expert. I am a mass-communications expert who has worked *pro bono* with the Federal Judicial Center (FJC) to develop practice standards,[2] including specifically at the request of the Advisory Committee on Civil Rules of the Judicial Conference of the United States. I am an independent notice expert, not a lawyer operating as a notice vendor or claims administrator in today's business bidding wars. I have continually performed expert analyses to help courts ensure that notice efforts are the "best practicable," and meet the "desire to actually inform" standard of Due Process. With my media training and experience in major class action cases, I advise judges and

political consultant Jim Messina formed Signal Interactive Media and designed the re-notification ordered in August 2016 (the "Re-Notification").

[2] I have collaborated *pro bono* with the Federal Judicial Center on the principles and writing of several of its publications: Model Plain Language Notices (2002), Judges' Notice and Claims Process Checklist and Plain Language Guide (2010) (the "FJC Notice Checklist"), and the notice content in Managing Class Actions: A Pocket Guide for Judges (2010) (the "FJC Pocket Guide"). My case work (notifying Holocaust Survivors, lead-poisoned children, abused aboriginal children, and numerous others), publications including law review articles, speaking including at law schools, and judicial recognition, can be found at www.hilseegroup.org. The FJC Notice Checklist and relevant pages from the FJC Pocket Guide are attached as **Exhibit II.**

the FJC on the changing media landscape today. My c.v., attached as **Exhibit B**, contains some 20 pages of judicial recognition of my notice expertise, as well as a listing of my publications including in law reviews on notice and Due Process.

4. After I submitted the Hilsee *Amicus* Letter, my opinions were questioned by Class Counsel and their notice vendors in the press, and by the notice vendors in the Vendor Declarations. I do not question their integrity; rather I question many of their statements and opinions. I was compelled to come forward concerning (a) the safety of these Class members and the public, and (b) the effect on class action practice stemming from misleading information having been provided to the Court, or from missing material information.

5. A prominent national class action lawyer once made a gracious comment about my dedication to Due Process through communication during a law school panel,[3] and I have not wavered in my intentions and my expert practice before or since. The Advisory Committee on Civil Rules itself has had faith in me,[4] and the FJC's resulting notice guidance has improved notice practice and been cited in scores of expert reports and court decisions.[5] I would not

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[3] Elizabeth J. Cabraser, at Tulane Law School, Feb. 2008: "*Todd Hilsee understands and appreciates the profound implications of notice on due process more than many, many lawyers. ... He is a notice expert; he is a communications expert; but his dedication to the idea of due process through communication transcends his work assignments and his living… He is a low key, personable person; very matter of fact about what he does. Do not be fooled; he is a giant in the field.*"

[4] Judge Lee Rosenthal, Chairperson, Advisory Committee on Civil Rules, Jan. 2002: "*I want to tell you how much we collectively appreciate your working with the Federal Judicial Center to improve the quality of the model notices that they're developing. That's a tremendous contribution and we appreciate that very much…You raised three points that are criteria for good noticing, and I was interested in your thoughts on how the rule itself that we've proposed could better support the creation of those or the insistence on those kinds of notices.*"

[5] Judge Barbara J. Rothstein, Director, Federal Judicial Center, 2010, Preface, MANAGING CLASS ACTION LITIGATION: A POCKET GUIDE FOR JUDGES: "*This pocket guide is designed to help federal judges manage the*

jeopardize any of this trust by raising unfounded cautions. I rarely submit opinions in support of objections, but in this case the issues are far too important to be silent.

OVERVIEW – IMPORTANCE OF *POLLARD* NOTICE

6. In August 2016, the parties reported that about 6,500 claims had been submitted, or less than 0.1% relative to the 7.5 million guns in the Class.[6] Other than curing two issues before the Re-Notification,[7] the remaining problems identified in the Hilsee *Amicus* Letter will surely suppress claims to a much lower level than they otherwise could be. The Vendor Declarations do not respond to the great majority of objective critiques in the Hilsee *Amicus* Letter. Without proper notice, the "*necessary steps to prevent future needless death and injury*" that Plaintiffs' complaint seeks,[8] will not have been taken. As addressed in the Hilsee *Amicus* Letter and herein, the Re-Notification is insufficient to cure the problems associated with the notice and claims process. There is a near-certainty that even after Re-Notification, more than 95% of the guns will not be repaired.

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increased number of class action cases filed in or removed to federal courts as a result of the Class Action Fairness Act of 2005. . . This third edition includes an expanded treatment of the notice and claims processes. . . Todd Hilsee, a class action notice expert with The Hilsee Group, supplied pro bono assistance in improving the sections on notices and on claims processes."

[6] Transcript of August 2, 2016 hearing at p. 40. See Also Declaration of Richard Arsenault, ECF No. 92-13, p.12-13.

[7] At the Court's suggestion during the August hearing, item 5.g.v. page 17 of the Hilsee *Amicus* Letter regarding the ordering of the claim form pages, and item 5.h.iii. on page 18 regarding the 'warning checkbox' on the claim form were addressed.

[8] First Amended Complaint at paragraph 59.

7. I have learned that a prior Remington gun defect class action (the *Garza* action),[9] produced claims for 820,000 guns from a class of 8.5 million members by using a notice plan that (a) relied heavily on direct mail notice, (b) included a simple claim form, and (c) included an attention-getting media notice with a clip-out claim form requiring only name, address, social security number, serial number and model.

8. Several issues compel me to again write on a *pro bono* basis:

a. The problems reported in the Hilsee *Amicus* Letter that have not been addressed;

b. The arguments in the Weisbrot Declaration about notice not being of "grave concern" despite the gravamen of the case being about a defect that can kill or injure;

c. The arguments (admissions) of counsel as to the expectation that few would be interested in responding to the claims process they agreed to;

d. The public posting of Remington documents that appear counter to the denials of the defect and related notice language that have clearly demotivated response;[10]

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[9] *Garza v. Sporting Goods Properties*, W.D. Texas, Case No. 93-01082.

[10] *See* Arthur Bryant, *Public Justice*, Unsealed Remington Documents Posted By Public Justice Show Defective Triggers In Millions Of Rifles Could Fire On Their Own, Nov. 15, 2016, http://www.publicjustice.net/unsealed-remington-documents-posted-public-justice-show-defective-triggers-millions-rifles-fire/, last visited Nov. 13, 2016. *See also* Scott Cohn, Documents Reveal Remington Wrestled with Potential Gun Safety Problems for Decades, CNBC, Jan. 18, 2011, http://www.cnbc.com/id/39759366, listing numerous Remington documents discussing the trigger defect.

e. The starkly better notice and claims process undertaken in *Garza* (which involved certain *Pollard* Class Counsel); and

f. The Re-Notification having itself failed to provide the best practicable notice.

9. It would be one thing if the Original Notice and Re-Notification (a) demonstrated a desire to actually inform the Class; (b) provided the best notice practicable under the circumstances; and (c) involved a claims process that was designed to overcome gun owners' aversion to relinquish their guns so they could participate in the settlement. If so, one could argue that the Class had its chance, and *chose* not to receive the relief being offered. My analyses show that is not the case. The notice and claims process failed to give the proper opportunity and proper communication, when doing so would have been reasonable, since how to accomplish these things are well known.

10. Indeed, this program must satisfy the high standards of notice because the Class member who is not adequately reached, not adequately informed, and not adequately motivated, leaves not only himself or herself at risk, but others—even non-Class members. People will be at the mercy of Class members who do not get proper notice or are otherwise not informed and encouraged to get their guns repaired. Yet, if the settlement is approved, Remington would get the release the settlement provides and would not oppose Class Counsel's $12.5 million fee—which apparently has no relationship to the actual number of claims.

11. If a notice plan that relies so heavily on internet banners and email in lieu of available physical mail will suffice in a case like this—a case being watched by the profession, the judiciary, and the national media—leaving people without adequate notice and at risk of a known safety defect, then the standard for notice in every other class action will be very low. Direct mail, though the most responsive form of notice, will not be proposed in other cases—even when it is readily available, as is the case here.

12. Concerned about problems with the settlement, Counsel for an objector informed me of their desire to include my opinions in their objection. I agreed.

SUMMARY OF OPINIONS

13. Considering the Original Notice and the Re-Notification, the Hilsee *Amicus* Letter and the Joint Response, the following summarizes the key notice and claims process-related problems:

a. **Failure to utilize individual notice by direct mail**. Data has shown for years that mail garners the most response. The few mailings done during the Original Notice (2,571) and the relatively few done during the Re-Notification (93,000) were done without even including claim forms[11]—a method and convenience that Mr. Weisbrot has written elsewhere yields the most claims, yet only describes to

[11] 4 inch by 6 inch postcards, with no claim forms attached, were sent to small subsets of known Class members, and no efforts to obtain reasonably identifiable mailing addresses from third parties were made.

this Court as "an" effective means, while arguing that more mail was not necessary. By contrast, 263,000 notices were mailed with simple claim forms to a warranty card database in the prior *Garza* Remington class action cash settlement, which together with attention-getting media notices garnered claims for 820,000 guns.

b. **Fine print / fleeting internet banners / inflated reach**. The Vendor Declarations brushed off proof of inflated audience "reach" and dismissed news and facts about un-viewable internet banner impressions and non-human audience fraud. Yet, U.S. Senators Warner and Schumer wrote this July to the Federal Trade Commission about the very internet banner ad fraud the Vendor Declarations dismiss.[12] In lieu of available mailings to all but 0.12% of all Class members—and none with claim forms—notice has relied on:

   i. Social media plus internet banner ad impressions (a "viewable" banner is where "**½ of the pixels are in view for 1 second**," and where more than half of all impressions are not viewable),[13]

[12] *See* letter from Sen. Schumer and Sen. Warner to Federal Trade Commission attached as **Exhibit K**. *See also* Weisbrot and Garretson statements in par. 59.

[13] Media Rating Council, Viewable Ad Impression Measurement Guidelines, http://mediaratingcouncil.org/081815%20Viewable%20Ad%20Impression%20Guideline_v2.0_Final.pdf; last visited October 6, 2016; The Five Factors of Display Viewability, Google, https://www.thinkwithgoogle.com/infographics/5-factors-of-viewability.html, last visited October 6, 2016.

ii. Emails (where un-refuted statistics show as low as single digit percentages of bulk emails are even opened—*See* par. 81 below), and

iii. Magazine ads that appeared in "fine print" with no prominent headlines or design features to capture attention (*See* **Exhibit V**);[14] and

iv. Radio ads that omit Rule 23(c)(2)(B) required content and reach a low percentage of the Class[15] (*See* par. 52 below).

And, despite the Re-Notification arguing *Facebook* to be an ideal way to reach gun owners, the settlement *Facebook* page does not show any "posts,"[16] and Signal Interactive Media, the firm advocating *Facebook*, does not appear to have a *Facebook* page.

No legitimate explanation for the avoidance of television advertising has been provided. Even after an assertion at the August hearing that it would cost too much, the Vendor Declarations provide no illumination of any analysis except repeating that assertion, and providing general media usage statistics that in fact *support* using television to reach a high percentage of the Class.[17]

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[14] **Exhibit V** contrasts the Original Notice in magazines with an ad Remington designed to capture politicians' attention.

[15] *See* Hilsee *Amicus* Letter at p. 26 "The radio notice plan is deficient…" (detailing flaws and citing that only 6.3% of rifle owners even use internet radio.)

[16] https://www.facebook.com/Remington-Firearms-Class-Action-Settlement-1251472158215121/, last visited October 5, 2016. It is only by a detailed search for "Remington How Well Do You Know Your Rifle" from within *Facebook* can one can find two (2) posts on *Facebook* during the Re-Notification, both on September 27, 2016, both of which show a relatively low number of "likes" of the page, and "reactions", "shares" and comments to the posts.

The Weisbrot Declaration assertion, without proof, that internet banner ads reached 40.57% of the Class is proven false by comScore data attached as **Exhibit Q.** The banner reach is inflated by 227% (*See* also par. 70 below).

c. **Safety defect messaging was buried and undermined, suppressing response**. The notices minimized concern about the alleged safety defect, thus suppressing response. The small generic headline of the Original Notice is a relic of failed 1950's notice practice. Class Counsel failed to urge Class members to make claims through press opportunities despite hyping the "potential audience" of the press release in prior vendor declarations.[18] Notice language avoided "risk of death and injury" messaging, instead layering in Remington's "the guns are safe" messaging. The Re-Notification diluted the safety defect by hyping the case as being first about "economic loss," serving only to de-motivate response, while the vendor tested only "feel good" banner ad messages. In addition to the unrebutted opinions throughout the Hilsee *Amicus* Letter, it has become clear that:

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[17] Mr. Garretson's partner has dedicated hundreds of millions of dollars to advertising, mostly on TV, for President Obama; and, other major class action notifications use television (*See e.g.*, the *Rocky Flats* settlement, par. 78 below).

[18] Declaration of Steven Weisbrot on Implementation and Adequacy of Settlement Notice Plan, ECF No. 92-9, Sept. 4, 2015, at p. 7.

i. Many gun owners seemingly want to believe the old and iconic Remington Corp. over lawyers and the government. This is noticeable from comments posted on *Facebook* pursuant to the Re-Notification (*See* **Exhibit C)**. Accordingly, when a notice offers a trigger replacement but the same notice says Remington thinks there is no problem with the trigger, response will be squelched.

ii. The newly publicized 133,000 pages of Remington documents posted by Public Justice,[19] revealing Remington's long-term knowledge of the alleged defect, indicate that the notice content should have been more definitive on the safety defect and should have strongly urged Class members to stop using their guns and have them fixed (if they chose not to opt out). The inclusion of denial language does not appear warranted, and, unlike in a monetary settlement offer, such language serves to demotivate response and thus defeat the purpose of a settlement offer that has value only if the trigger repair is necessary to make people safer. Denial language that has a place in legal pleadings need not appear in a settlement notice offering a repair to the trigger, because such denials lead Class members to disbelieve the problem the settlement purports to address, and thereby not act on it.

[19] *See* www.remingtondocuments.com, last visited Nov. 51, 2016.

d. **False information / hidden information / missing information.** Beyond the inflated internet banner reach inflated by 227%, the reach of the Original Notice was inflated by calculating internet banner exposure improperly, and by citing magazine audiences erroneously. The Vendor Declarations contain either unsubstantiated conclusions (which cannot be replicated by accepted methods) or are otherwise demonstrably false, *e.g.*, the magazine reach was inflated by 35%, which GfK MRI reports prove (*See* **Exhibits O** and **P** and par. 66-69). While arguing that the notice was effective, the parties withhold answers to questions about basic knowable statistics. For example:

   i. How many physical mailing addresses for Class members does Remington possess?

   ii. How many people who were sent an email could have been sent a physical mailing?

   iii. How big is the warranty database?

   iv. How many people opened and viewed a notice at the settlement website?

   v. How many emails sent were never opened?

   vi. How many clicks were there to the banner ad impressions?

vii. Which websites did the banner "impressions" appear on and when? and

viii. How many claims have been received to date and how many are invalid?

Many more missing facts are typically known are available for inspection. For example, the Re-Notification provided no reach calculation of the notice plan, while falsely implying it would reach ½ of "potential" Class members through *Facebook*. Attached as **Exhibit D** is a **List of Missing Information** that should be produced for Court scrutiny.

It has also come to light, by comparison to *Garza,* that the *Pollard* Class excludes government entities, *e.g.,* police departments and the military which potentially have a significant volume of rifles that will not be repaired through this settlement.[20] Among all the notice documents, the government exclusion reference is buried on page 4, inside question 7 of the Long Form Notice. This information does not appear on the main page of the website explaining who is included, nor is it disclosed in the Claim Form, the Short Form Notice, or the Reminder Notice. The exclusion of government entities raises questions about the *Pollard* settlement, including:

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[20] A significant objector to the *Garza* settlement was the Pennsylvania Department of Corrections and Pennsylvania State Police because these government entities had a large volume of shotguns and wanted to be sure they could "*receive either safe shotguns or a sufficient award to replace shotguns which are defective*." *See Garza v. Sporting Goods Properties*, 1996 WL 56247, at p. 23.

ix. Did the administrator inflate claim totals provided to the Court by including claims from government entities that will ultimately be rejected?

x. Did Class Counsel include government purchased rifles in the total numbers of rifles cited to support a hypothetical value of the settlement?

e. **Claims process designed to fail**. Even if Class members had been reached with notice, the claims process appears designed to squelch response:

i. Claim forms were not included with notices mailed or published, despite that tactic working very effectively in the previous *Garza* Remington class action.

ii. The *Pollard* claim form is long and onerous, when a simple one would have sufficed as it did in *Garza*. The *Garza* claim form took up only one third of a page and was enormously responded to as detailed below. *See* **Exhibit E**.

iii. The chosen process requires sending a rifle away (*which the parties revealed they knew the Class would be averse to*) while past recalls engaged local gunsmiths across the country to fix the guns brought to them. Remington documents show that 173 gunsmiths were engaged to repair triggers (estimated to require only 7 ½ to 10 minutes) that were part of a recall campaign undertaken in 1979.[21] This is in contrast with the requirement to either send guns to Remington or, if an accidental discharge has not happened yet, take them to one of only 24 authorized repair centers ("RARC's") in the U.S.[22] Engaging more dealers as Remington did in 1979, perhaps even more than then, could help overcome any need by registration-averse gun owners to relinquish their guns.

iv. Finally, the settlement arbitrarily shuts down the opportunity to fix the trigger after only 18 months following final approval. This too suggests an intent by the parties to reduce claims. As a sample calculation, if the implied but false reach of ½ of the rifles led ½ of those to participate, Remington would be flooded with 104,166 rifles per month for 18 months. Given this overwhelming monthly number, one must wonder whether it was always assumed that few rifles would actually be repaired under the settlement and its chosen claims process.

The above claims process points are in addition to the un-rebutted opinions on the claims process and claim form deficiencies at page 16-18 in the Hilsee *Amicus*

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[21] *See* Remington company memos, ECF No. 113, p. 17-18 and 23, Dec. 21, 2015, attached as **Exhibit U**.

[22] *See* http://remingtonfirearmsclassactionsettlement.com/pdf/map_of_remington_authorized_repair_centers.pdf. 27 states have no RARC at all, and many Class members would have to drive for many hours or days, if even possible, to get to one.

Letter regarding the potential to correct or eliminate the claims process. And, in lieu of correcting the deficiencies with the claims process, the Re-Notification suffered an additional downside as to timing: the notices were disseminated shortly before hunting season, adding another layer of claimant disinterest in submitting to the onerous process.

14. Many of these topics are covered in the Hilsee *Amicus* Letter, and rebuttal points to statements and opinions in the Vendor Declarations are included in this Affidavit.

OPINIONS IN REBUTTAL TO "JOINT RESPONSE"

15. The Vendor Declarations did not rebut the problems associated with the claims process, or the notice content and messaging. My opinions on these topics that are expressed in the Hilsee *Amicus* Letter remain, in addition to those outlined herein.

16. Overarching the above major defects are failures in the key communications concepts of Due Process requirements and the requirements of Federal Rule of Civil Procedure 23(c)(2). The sections below group my opinions as follows:

a. **Due Process failure: Desire to actually inform is lacking,** page 17;

b. **Rule 23 failure: Notice was not the best practicable and individual notice was lacking,** page 24;

c. **False reach and inflated audience measurement,** page 43;

d. **Responses to Other statements,** page 57; and

e. **Conclusions**, page 72.

DUE PROCESS FAILURE: DESIRE TO ACTUALLY INFORM IS LACKING

17. The notice expert understands that Due Process satisfactory class action notice requires that "***[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it***."[23] Neither the Original Notice nor the Re-Notification met this high standard of intent to truly communicate.

18. Mr. Weisbrot admits he harbors less concern about notice than he would if he had to inform families of those already injured or killed:

> *"[T]his case concerns the diminution of the value of certain Remington Rifles. This is not a case about personal injuries or wrongful death…Obviously, had this been a personal injury action, I would harbor the very same grave concerns about class member safety that Mr. Hilsee offers—who wouldn't?"*
>
> Weisbrot Declaration at page 3-4.

19. His rationalization is out of sync with the reason for the lawsuit, and ignores the only reason the settlement offer would communicate any value: keeping people safe before they

[23] *Mullane v. Central Hanover Bank and Trust*, 339 U.S. 306, 315 (1950)

are hurt or killed. Ineffective notice will leave a huge majority of Class members with unrepaired guns, leaving them vulnerable to the very **safety defect that Class Counsel pled**:

> "*At all times herein mentioned the Product was in a defective condition and unsafe, and Defendants knew, or had reason to know, or should have known that the Product was defective and unsafe, especially when used in the form and manner as provided by Defendants*."
>
> Class Action Complaint, ECF No. 1, January 28, 2013.
>
> and
>
> "*Defendants…failed to disclose its own knowledge of the defective nature of the Product when Defendants knew that there were defects in the firearms which would result in damage and harm*." (Emphasis added)
>
> First Amended Class Action Complaint, p. 33, ECF No. 90, April, 15, 2015.

20. Disclosing the defects would alert the Class to the unsafe condition—which would drive the response the Court wants. This goes to the method of notice, and the "messaging." The notices and mode of distribution should not obscure the import of the underlying danger, and the claims process should counter known aversions to gun surrender.

21. Effective notice will save class members from *suffering* personal injuries or deaths, while a lack of notice could *cause* them. Mr. Weisbrot's "not about personal injuries" argument is not only callous to past and future victims and their families,[24] but also counter to

[24] The Weisbrot Declaration describes another matter where the *raison d'etre* for the class action was a safety defect—*Czuchaj v. Conair*, Case No. 13-01901, S.D. Cal.—but lacks candor or diligence in research. My declaration in that case was not an objection to a settlement. The defendant asked my opinions on plaintiffs'

the Court's prior admonition to plaintiffs' counsel who previously touted the settlement as not waiving personal injuries:

> "*The problem with that approach is somebody actually has to get hurt. If the guns are defective and they're still out there, there is the possibility that somebody is going to be severely injured or killed by one of those weapons*."
>
> Transcript of Hearing, Feb. 4, 2015, p. 12, line 23.

22. In my view, the Original Notice which Mr. Weisbrot argues was "previously approved,"[25] and which he so touts to other courts,[26] could not have satisfied Due Process because:

a. Its reach statistics are now proved false (see par. 67 and 70 below);

b. Rule 23-required individual mailings were not done, which we now know could have been done (see par. 30-33 below); and

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proposal to send notice to a class certified for trial where, (a) Plaintiffs' complaint referred to hairdryers as "*handheld flamethrowers*," claiming women they represented were susceptible to have their "*scalps burned or setting fire to their hair, body, clothing, or carpet*," and (b) Plaintiffs' counsel possessed the names and addresses of tens of thousands of women they represented but refused to send mailings to them. *See* Plaintiffs' Second Amended Complaint, ECF No. 41 (June 2, 2014), Hilsee Declaration, ECF No 200-1, and supporting declaration of notice expert Jeanne Finegan, ECF No 200-2, (both Feb. 8, 2016) in that case. (Class was ultimately narrowed and plaintiffs agreed to send mailings to known and identified class members.)

[25] Weisbrot Declaration par. 4 refers to the "*previously-approved Due Process Notice Program*" without acknowledging the Court's Dec. 8, 2015 finding after it was completed that the "*low response rate demonstrates the notice process has not been effective*."

[26] Recently, in *Joseph v. Monster*, Cir. Ct. of Cook County Illinois, Case No. No. 15 CH 13991, Mr. Weisbrot touted the *Pollard* Court's Preliminary Approval Order and its August 23, 2016 Order as evidence that the *Pollard* Court "*reiterated*" that "*the Due Process Notice Program implemented by Angeion Group in Pollard met due process*" without any mention of the Court's Dec. 8, 2015 Order finding that the notice was not effective.

c. Mr. Weisbrot has now articulated what sounds like a lack of "desire to actually inform" behind it all.

Thus, it is apropos to quote one of my law review articles published in the GEORGETOWN JOURNAL OF LEGAL ETHICS:

> *"So when planning notice, you must ask yourself: Is this what I would do if I really wanted this class member to know his/her rights?"*
>
> Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform, 18 GEORGETOWN JOURNAL LEGAL ETHICS 1359 (2005). Todd B. Hilsee, Shannon R. Wheatman, & Gina M. Intrepido[27]

23. The notice expert considers intent in assessing whether communications satisfied Due Process. For example, here I would ask:

a. *Would Remington, if it wanted gun owners to buy a new gun, run ads in magazines using fine-print and no attention-getting headline*? No, it would not. But the Original Notice here, dubbed the "due process notice" by Mr. Weisbrot, did just that. The magazine ad in the Original Notice effort (small generic headline/no attention-getting design) is compared to a Remington ad to get politicians' attention (large font headline/attention-getting design) in **Exhibit V**.

[27] This law review article details the communications lessons from the seminal due process decision *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950): "*But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it" (Emphasis added).*

b. *If Remington wanted past customers to know of a new offer for specific models of guns, would it ignore its database of customers including those who sent in warranty cards*? No, it would not. But the Weisbrot-claimed "due process notice" mailed just 2,571 notices only to people with already repaired triggers. Only after the Court cancelled the fairness hearing and required more notice were warranty records found.[28]

c. *If a gun was dangerous and Class Counsel wanted people to fix them, would they turn down press interviews, agree to notices without attention-getting headlines, send almost no mailings—and none with postage-prepaid claim forms, when its notice vendor publishes articles (but did not testify as such) that such means will maximize claims response*? No. But that is what was done during what the Vendor Declarations call the "due process notice."

24. Mr. Garretson explains that his notice plan for the Re-Notification was intended only to increase awareness and response rates, not to satisfy Due Process.[29] He calls Mr. Weisbrot's original notice the "Due Process Notice Plan."[30] Mr. Garretson does not demonstrate what percentage of the Class the Re-Notification plan will reach; instead he misleads the Court

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[28] However, the Court was not told how big the warranty list is, and whether the 1,000,000 people who are being sent only an email could have been sent a physical mailing—the means known by Mr. Weisbrot and Class Counsel from experience in prior Remington class actions, to yield more claims by far.

[29] Garretson Declaration at par. 9: "*The scope of Signal's role was to build awareness of the settlement, and to increase response rates as requested by the Court.*"

[30] *Id* at par. 6.

by implying the *Facebook* ads alone will reach 3.4 million, or roughly half, of the "potential Class members."[31] Yet it could not come close to that level, as detailed below (*See* par. 63-64). Physical mailings were still not done for the bulk of the contact records that were disclosed to exist in the Re-Notification plan. Instead, emails were sent when:

a. Mailings have been demonstrated to result in high claim levels in other Remington gun class action cases;

b. Statistics on emails show very low readership. *See* par. 81 below; and

c. A plethora of data shows mailings work best to maximize claims, as even Mr. Weisbrot's own co-authored client publications state.[32]

25. Despite the vendor hyping the value of a press release (yet providing no data as to how many readers read a notice at the case website as a result of any such stories),[33] Class Counsel have not explained how it benefitted Class members' interests when Class Counsel during press inquiries turned down opportunities to urge Class members to make claims and

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[31] *Id* at par. 41: "*Signal is pleased that our pre-program testing of social media demonstrates empirically that if our social media campaign is expanded to the full identifiable universe of hunter-sportsman using social media (approximately 3.4 million potential class members), we will increase awareness of the settlement, including the opportunity to have the triggers replaced*." The notion that 3.4 million class members might be reached is false.

[32] *See* Hilsee *Amicus* Letter at p. 9-14. *See also* Class Action Settlement Administration for Dummies, **Exhibit F** to this Affidavit.

[33] Declaration of Steven Weisbrot on Implementation and Adequacy of Settlement Notice Plan, ECF No. 92-9, Sept. 4, 2015, at p. 7.

repair their guns, which they did when declining comment to CNBC for a national documentary during the settlement.[34]

26. Given the above and below, and given the Court's August 23, 2016 Order, which created a new opportunity to opt out and a new opportunity to object (the elements of a Due Process notice), the Original Notice did not satisfy Due Process, and the Re-Notification notice does not satisfy Due Process.

27. For the settling parties, a central argument is that a lack of claims was to be expected because gun owners do not want to "register" or part with their gun.[35] Then why does the settlement ***require*** people to register and part with their gun? In 1979, Remington coordinated 173 gunsmiths in the United States plus some in Canada to whom model 600 and 660 gun owners could simply take their then-recalled gun and have the trigger fixed in 7 ½ to 10 minutes.[36] This could surely be done today with even more gunsmiths and dealers convenient to

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[34] Hilsee *Amicus* Letter at p. 15. *See also* http://video.cnbc.com/gallery/?video=3000463701, last visited July 24, 2016.

[35] The settling parties argued in June that "*owners of firearms may be skeptical of any process that they perceive as analogous to firearms registration*" and "*Other issues that may be impacting participation rates in this case include rifle owners not wanting to part with a firearm they use for personal protection, not wanting to part with a firearm during hunting season, or generally being suspicious of litigation and the government*." ECF No. 127 and p. 5-6. During the August 2, 2016, evidentiary hearing on the notice issues, the settling parties reiterated these arguments.

[36] Remington company documents at p.17-23 of Letter from Richard Barber to Judge Smith, Dec. 21, 2015, ECF No. 113, attached as **Exhibit U**.

people in every state. It is also worth noting that the 1979 effort relied heavily on direct consumer notification and there was no deadline.[37]

28. The problem is not class members choosing not to participate and get safe rifles, but rather the lack of adequate notice and the squelching of claims by having an onerous claims process instead of making it easy through local gunsmiths, which Remington knows how to do.

RULE 23 FAILURE: NOTICE WAS NOT THE BEST PRACTICABLE, AND INDIVIDUAL NOTICE WAS LACKING

29. The class action notice expert understands that Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure requires the "***the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.***" Neither the Original Notice, nor the Re-Notification, satisfied these important communications requirements.

30. Recently, the 1996 *Garza v. Sporting Goods* cash settlement of a Remington shotgun class action was reported in a September 15, 2016 article about the *Pollard* case in

[37] Id, at p. 17-18. Note that Direct Notice accounted for more than 2/3 of the 1979 Remington recall notification budget.

Forbes, Banner Ads Are a Joke in the Real World but not in Class-Action Land.[38] The *Garza* record[39] discloses:

a. The *Garza* class consisted of 8.5 million Remington shotgun owners where the barrel steel was allegedly defective and susceptible to bursting.[40]

b. *Garza* mailed notices, together with claim forms, by postal mail to 263,000 warranty card registrants.[41]

c. The *Garza* media notices reached tens of millions of people, were attention-getting, and included claim forms directly in the notices.[42]

d. The *Garza* claim form was simple. It asked for Model, Serial Number, Name, Address, Telephone, Social Security Number, Date and Signature. *See* **Exhibit E**.

e. In *Garza*, claim forms were filed for **820,000** Remington shotguns, with **750,000** found eligible**.**[43]

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[38] *See* Dan Fisher, *Forbes*, Banner Ads Are a Joke in the Real World but not in Class-Action Land, Sept. 15, 2016, http://www.forbes.com/sites/danielfisher/2016/09/15/banner-ads-a-joke-but-not-in-class-action/#6b8cc6c46980, last visited September 28, 2016.

[39] The case is known as *Garza v. Sporting Goods Properties*, W.D. Texas, Case No. 93-01082.

[40] *Garza v. Sporting Goods Properties*, 1996 WL 56247, p. 5.

[41] *See Id*, at p. 14: "*In addition, approximately 260,000 long form notices had been sent to owners of shotguns who had provided warranty cards to Remington…*" *See also* p. 94, FN 24: "*In addition to these notices, Long Form Notices were sent to approximately 263,000 shotgun owners identified from product owner materials and customer lists maintained by Remington*."

[42] *See Id*, at p. 14, and p.94 FN 24. *See also Garza* notice as published in Field & Stream, p. 89, July 1996, attached as **Exhibit E.**

f. Class Counsel in *Garza* apparently included Mr. Jon Robinson who is also counsel in *Pollard*.

31. *Garza* raises questions in this case: Did (and does) Remington have hundreds of thousands of warranty card names and addresses, and did class counsel know it, when Mr. Weisbrot swore his prior declarations? Included in the Weisbrot declarations are the following:

> "*Moreover, I was advised that there are less than 10,000 U.S. Postal Address or email addresses available via the defendant's records…The individual notice effort in this matter will consist of mailing Direct Notices…to each member of the Settlement Class identified by the Parties through reasonable efforts*"
>
> Declaration of Steven Weisbrot, Esq., on Adequacy Notice Plan (sic), ECF No 68-11, Dec. 5, 2014, at p. 4.
>
> and,
>
> *"[W]e sent Direct Postcard Notices by U.S. Mail to approximately 2,571 members of Settlement Class B(2) who paid Remington for the trigger replacements described above."*
>
> Declaration of Steven Weisbrot on Implementation and Adequacy of Notice Plan, ECF No., Sept. 4, 2015, at p. 6.[44]

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[43] "*A total of 496,451 claim forms were received representing 820,708 shotguns. The claims process has established that 477,376 forms were timely filed and listed at least one shotgun eligible for the settlement, for a total of 750,372 eligible shotguns*." Court's Advisory to all Garza Settlement Class Members, ECF No. 151, May 21, 1997. *See* **Exhibit X**.

[44] Weisbrot Declaration, p. 12, states that the few mailings sent during the initial notice were "*precisely what is required under Rule 23*" (p. 12). He maintains "*we have been advised that we were provided with the only targeted list of consumers with rifles at issue in this litigation*" (p. 12), while also stating in the same paragraph that, now, the re-notification will tap into "warranty registrations" among other lists.

32. It is not convincing to attempt to justify sending only 2,571 mailings during the Original Notice in this way…

> "*For instance, we have been advised that we were provided with the only targeted list of consumers with rifles at issue in this litigation…if such a list existed I would agree with Mr. Hilsee that it should be utilized*."
>
> Weisbrot Declaration at par. 21.

...and in the same paragraph admit to having been given reasonably identifiable lists of 1,093,000 people, including Class member-specific warranty registrations, for the Re-Notification, while also claiming that the Original Notice satisfied Rule 23 and Due Process.

33. The notice and claims facts of *Garza* suggest the need for new scrutiny of individual notice not only as to the *Pollard* Original Notice, but more importantly as to the Re-Notification:

a. What reasonable investigation was undertaken before advocating a plan to deprive potentially hundreds of thousands of reasonably identifiable Class member rifle owners of a Rule 23-required mailing about the safety defect that plaintiffs' pled?[45]

[45] Class member Roger Stringer expressed, in ECF No. 149, Oct. 24, 2016, how a Class member who suffered tragic loss feels about Remington not physically mailing them an alert sooner when their addresses were sitting in Remington's files for years: "*On September 27, 2016 I got a postcard in the mail warning me of the potential hazard of the very gun that killed my youngest son. It was 5 years, 3 months and 16 days too late for my little buddy*." Perhaps it would not be too late for some of the 1,000,000 other people who got an email, to instead get an actual mailing.

b. Given that there were 263,000 warranty registrants in 1996 for two models of shotguns (*Garza*), and that the mailings were very successful, did Class Counsel or Remington inform Mr. Weisbrot of the availability of targeted and potentially very extensive warranty card data?

c. Unlike the Original Notice, the Re-Notification calls for individual notice (though mostly by email) to 1,093,000 people, including the warranty database. Why did Remington withhold reasonably identifiable warranty card addresses and not produce them earlier, given the Rule 23 requirements and the requirements of due process? Who gave Mr. Weisbrot the erroneous advice earlier?

d. How many of the 1,093,000 records are warranty registrants?

e. Why is the Court being told warranty registrants are among a host of "*over-inclusive*" lists, when warranty cards are model and serial number specific?[46] Remington's service center phone call data and repair request data, included in the 1,093,000 records, would also likely include mailing addresses, as well as model and serial number specific data points.

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[46] Mr. Weisbrot states at p.12 of his declaration: "*[T]he supplemental reminder notice is an over-inclusive claims stimulations effort aimed at individuals who have contacted the company for various reasons (service center phone calls, company alert sign-ups on the Remington website, warranty registrations, repair requests), and is not limited to purchasers of firearms, much less the particular rifles at issue in this litigation, which is what Rule 23 requires.*"

f. Warranty cards contain physical mailing addresses.[47] How many of the 1,093,000 contacts have a physical address associated with the record that could be used instead of sending emails?

g. Why did the settling parties not send a claim form (let alone apply pre-paid return postage to it) to known Class members in the Re-Notification mailing if they truly desired to maximize claims?[48]

34. Mr. Garretson, who designed the Re-Notification, fails to explain how his recommendation to mail a bland 4x6 postcard (**Exhibit H**) to only 0.12% of the Class (representing only 8% of the individuals identified by Remington) could possibly represent the best means of increasing response.[49]

35. The questions of warranty card availability, physical mail vs. email, and failure to include claim forms with mailings in the Re-Notification are amplified by Mr. Weisbrot's declaration characterizing physical mail to be "***an*** *effective and responsive means of notice*" (emphasis added) in the Weisbrot Declaration (p.12), when in fact a publication he co-authored stated:

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[47] A Remington warranty registration card is **Exhibit 1** to my July 29, 2016 Hilsee *Amicus* Letter, ECF No. 134 (**Exhibit A** hereto).

[48] *See* photos of the actual Re-Notification postcard as sent in *Pollard* attached as **Exhibit H.**

[49] The Re-Notification sent 93,000 postcards to the 7.5 million class (0.12%). The 93,000 postcards represented 8% of the 1,093,000 individual records discovered during the Re-Notification.

> “***Email notices tend to generate a lower claims rate than direct-mail notices***.”
>
> Class Action Settlement Administration for Dummies. Co-author Steven Weisbrot. *See* attached **Exhibit F.** (emphasis added)

Mr. Weisbrot did not mention what his former firm revealed in federal court:

> “*Having administered hundreds of class settlements, it is KCC’s experience that consumer class action* ***settlements with little or no direct mail notice will almost always have a claims rate of less than one percent (1%)***.”
>
> Declaration of Deborah McComb re Settlement Claims, *Poertner v. Gilette*, Case No. 6:12-cv-00803-GAP-DAB, ECF No. 156, April 22, 2014. (emphasis added)

36. The Weisbrot co-authored publication goes on to advocate “**Double postcard notice and postage-prepaid tear-away claim form**.” as representing the type “**most likely to increase the number of claims filed in a settlement**.” (emphasis added.) **Exhibit F** at p. 14. The reason for the postage-prepaid tear-away claim form involves the well-known factor of convenience. When the claim form is right there in the class member’s hands, with the return postage already applied, it is easier to fill it out and send it back. Its physical presence is a reminder to do so. Indeed, as the Weisbrot co-authored publication makes clear:

> “*The claims rates of the varying types of notice and claim form designs tend to be most impacted by their distribution methods, their ability to be easily understood by recipients, and the ease with which class members can file the necessary forms and take any required action*.”
>
> Class Action Settlement Administration for Dummies. Co-author Steven Weisbrot. *See* attached **Exhibit F** (emphasis added).

37. While the Vendor Declarations invoke an argument involving "unreasonable cost" of notice,[50] high cost is not a legitimate justification for failing to provide the required notice, especially mailing response-oriented notices. I have a price quote on the cost to send physical mailed notice to 1,000,000 million class members, including printing, mailing and outgoing postage for about $315,100 or roughly 32 cents each.[51] This would be for a double postcard notice and postage-prepaid tear-away claim form—exactly the format Mr. Weisbrot has advocated to be the most likely to increase claims, as shown above and in **Exhibit F**.

38. If 40% of 1,000,000 identified recipients made a claim (400,000 claims),[52] the approximate total cost including the printing and sending of the outgoing notices, plus postage for the incoming claim forms, would be just $494,700 (inclusive of the $315,100 indicated above), which by any measure is reasonable for a case of this nature. It is only in comparison to ineffective email that these reasonable costs could be called "high." But the real and critical cost

[50] Mr. Weisbrot explained in par. 5 of his declaration that he did not harbor "grave concerns about class member safety" because *Pollard* was "not about personal injury" but rather, that it is an "economic loss" class action. In paragraph 6 he dismissed the examples of successful notice tactics used in an economic loss class action to compensate class members in the *In re Holocaust Victims Assets Litigation* (the "Swiss Banks" case). While unwilling to recognize the importance of notice to unaware owners of guns pled to be defective and unsafe, he attempts to distinguish *Swiss Banks* by citing the horrific underlying human rights circumstances. Mr. Garretson stated in par. 34 of his declaration that "*The parties first evaluated television advertising prior to the involvement of Signal and determined it is prohibitively expensive and impracticable in this matter*" with no supporting evidence.

[51] These costs are based on a current August 2016 quote from an experienced class action notice mailing company, Mailing Handling Group of Eden Prairie, MN. Postage is estimated by the mailing vendor. Depending on the mailing list, rates can improve or be more expensive based on the presort and/or saturation of pieces going to certain locations.

[52] If the notice and claim form design adopted the messaging components in the Hilsee *Amicus* Letter, and the parties used best-practices for address look-ups and re-mailing protocols, this would not be an unrealistic number of claims to receive. Of course, identifying more Class members, and removing claims deterrents could increase claims further still.

of using email instead of postal mail is the certainty, based on data revealed by claims administrators as disclosed in the Hilsee *Amicus* Letter, that significantly fewer class members will see, read, and respond to an email relative to a physical mailed notice. Mailed notice will ensure that an exponentially higher percentage of the Class gets compensation before being bound by a final judgment and being left with guns that Class Counsel believe and pled are unsafe.

39. At 32 cents each, response-oriented mailings to additional lists that could be obtained, as suggested in the Hilsee *Amicus* Letter, would be worth it. Mr. Weisbrot does not explain any reasonable hurdle against trying to obtain access to other mailing lists. His "opinions" are almost all simple recitations of what counsel advised him.[53] The Weisbrot Declaration argues against efforts to leverage third parties citing impermissible tactics that are not necessary—tactics which were not advocated in the Hilsee *Amicus* Letter:

a. I did not advocate imposing "*legal process*" on the Federal Firearms Licensees ("FFLs") and the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("BATFE"), neither did I advocate issuing subpoenas to them, nor suggest that Firearm Transaction Records need be used in any way as "*evidence*";

b. I did not advocate "*buying*" the NRA's mailing list; and

[53] Weisbrot Declaration at par. 27-28.

c. I did not advocate "*releasing to the public*" FFL Trace reports or transaction records.

40. Instead, the Hilsee *Amicus* Letter advocated:

a. That Remington ask its own dealers to inform their customers about the safety defect and settlement offer by mailing a notice and being reimbursed for the effort. In fact, FFLs must complete BATFE Form 4473 on rifle purchases and retain them in an orderly filed manner for 20 years.[54] As shown on BATFE Form 4473 attached as **Exhibit AA**, these forms capture names, addresses, models and serial numbers of rifles purchased. If Remington and Class Counsel wanted to repair triggers, Remington could simply ask these sellers (their customers) to send a mailing to affected owners. Some will refuse, but some will certainly comply out of (a) a desire to help Remington; and (b) a desire to help customers;

b. Taking advantage of the NRA's advertised offer to allow affinity partners to use its lists, and suggesting Remington simply ask them. Mr. Weisbrot's recitation of what counsel told him about the NRA not "*selling*" its customer list is irrelevant. The NRA statement says that it makes its list available to affinity partners as

[54] BATFE Form 4473, (5300.9) Part I, Revised April 2012, p. 3: "*After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 (which includes the Notices, General Instructions, and Definition), and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological (by date), alphabetical (by name), or numerical (by transaction serial number), as long as all of the seller's completed Forms 4473 are filed in the same manner.*"

shown in the attached **Exhibit G.** All it would take, it seems, is Remington desiring to inform absent class members and asking the NRA to support an effort to make guns safe; and

c. Techniques that allow courts to keep mailing lists held by others confidential. The Hilsee *Amicus* Letter identified steps that courts take to utilize, but keep confidential lists sealed and private.

41. As noted in the Hilsee *Amicus* Letter, it is very common for courts to request third parties to assist defendants get notice to Class members, and Angeion has done so many times in securities litigation—the most common type of class action there is. An example court order is attached as **Exhibit BB**, [55] reflecting the process of requesting third-party assistance and providing reimbursement for their efforts.

42. Mr. Weisbrot's statement that he does not have a grave concern about Class member safety, given his "understanding" that the notice is not about personal injury claims,[56]

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[55] *See In re ITT Educational Services, Inc. Securities Litigation (Indiana)*, S.D. In., Case No. 14-01599, ECF No. 98, Nov. 4, 2015: "*Nominees who purchased or otherwise acquired ITT Securities between February 26, 2013 and May 12, 2015, both dates inclusive, shall send the Notice and the Proof of Claim to all beneficial owners of such ITT Securities within fourteen (14) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and the Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred in providing the Notice to beneficial owners who are potential Members of the Settlement Class out of the Settlement Fund, which expenses would not have been incurred except for the sending of such Notice, subject to further order of this Court with respect to any dispute concerning such compensation.*"

[56] Weisbrot Declaration at par. 5.

has quite possibly colored a disinterest in researching whether there are reasonable ways to identify Class members and reach them with notice by the most responsive means.

43. In lieu of using highly affordable mailings to all reasonably identifiable Class members as Rule 23 requires, the Original Notice counted on fleeting internet banners that would supposedly reach 40.57% of the Class.[57]

44. Thus Mr. Weisbrot suggests that 3 million of the 7.5-million-member Class got their Rule 23-compliant notice from these banners. However:

a. What those internet banners looked like, and what information they conveyed, was not previously provided to the Court; and

b. The Court was never told how many people clicked the banners or otherwise visited the settlement website (where Rule 23 compliant notices were housed), or filed claims, even though those statistics are knowable in detail.

45. I have through industry research now located a copy of the Original Notice internet banner that the Vendor Declarations hold out to have provided Rule 23-compliant notice. It reads in its entirety: "**A class action has been settled. If you own certain Remington firearms you may be affected. Click here for more information**

[57] Weisbrot Declaration at par 15.

remingtonfireamrmsclassactionsettlement.com." The Original Notice banner is attached **Exhibit CC**. This notice fails to satisfy Rule 23(c)(2)(B):

a. The banner does not clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3);

b. Even "viewable"[58] exposures to this banner cannot be the best practicable means of reaching the Class when reasonably identifiable Class members could have been reached by individual mailed notice; and

c. Purporting to reach 40.57% of the Class by these banners, but reaching only 12.3% to 12.4% as demonstrated by the attached comScore reports (*See* **Exhibit Q** and par. 70 below) cannot represent the best notice that was practicable.

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[58] *See* footnote 13, describing the industry definition of a "viewable" banner as being one where **½ of the pixels were on screen for a minimum of one second**. One must remember that "viewable" impressions are the tip of the iceberg so to speak, in that most impressions counted towards reach are not viewable, or are double-counted, or are outright fake (viewed by computers not humans).

46. A look at the social media postings for the Re-Notification reveal how *little* those who did not click these digital ads learned. The Re-Notification *Facebook* post stated: **How well do you know your rifle? Take a moment to find out if your firearm qualifies for benefits from a class action settlement. Check your Remington serial number today. A proposed nationwide settlement has been approved in a class action lawsuit involving certain Remington firearms and the replacement of certain trigger mechanisms**.

47. Neither the Original Notice banner nor the Re-Notification social media post satisfy any of the content requirements of Rule 23,[59] let alone communicate the safety issue and underlying defect, thus failing to motivate Class members to act with any urgency.

48. The Original Notice and the Re-Notification also cannot represent the best practicable notice because they offer $12.50 vouchers for owners of 600, 660 and XP-100 series rifles for those who do not opt out, in lieu of free trigger repairs *without disclosing* that an ongoing recall and repair program exists for those models, or that 20% discounts are offered and available to the public:

a. The existence of the ongoing recall on model 600, 660 and XP-100 rifles is at Remington's website (although buried and not found in menus):

[59] Fed. R. Civ. P. 23(c)(2)(B) states in part: "*The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).*"

https://www.remington.com/support/safety-center/safety-modification-program/remington-model-600-660, and https://www.remington.com/support/safety-center/safety-modification-program/remington-model-xp-100[60] last visited Nov. 12, 2016. *See e.g.*, the model 600 and 660 ongoing recall pages at **Exhibit DD**.

b. For those who find Remington's separate recall oriented website (it is also buried and not found in menus) http://xmprecall.remington.com,[61] ANYONE can type in an incorrect or even bogus serial number, and will instantly be offered a 20% discount on Remington merchandise. *See* this splash screen at **Exhibit EE**. Due to the significant cost of many Remington products, this 20% reduction, freely available to the general public, is far more valuable than $10.00 or $12.50 vouchers that these Class members get in exchange for a release of their claims.

49. Comparing the Re-Notification postcard as actually sent (*see* **Exhibit H**) with advertising that Mr. Garettson's partner Jim Messina created for President Obama in 2012 (*see* **Exhibit I**),[62] shows that the words and design of the Re-Notification postcard—and sending it

[60] The repairs are free to those who never had their model 600 or 660 repaired under this recall to date.

[61] This address is not on the world-wide web and the link is not "clickable" from the Model 700 and Seven series recall pages.

[62] Mr. Messina's political work includes ads with bold, blunt headlines like "**Breaking: You can Vote Now in Iowa**" when the campaign wanted voters in Iowa to know they could vote now, or "**Early Voting Has Begun**" when seeking to get people to vote early. *See* more examples at: http://www.p2012.org/blogads/blogadsobama2.html, last visited October 4, 2016.

without a claim form for convenience response—cannot be believed to be the best way to communicate with or motivate an audience—especially unaware owners of guns that unbeknownst to them could fire without the trigger being pulled, and possibly injure and kill people as a result.

50. The impactful political advertising by Mr. Messina similarly contrasts with the Re-Notification email (*see* **Exhibit J)**, which uses the same words as the postcard. This is not what an experienced communicator would choose as the best message/design to drive response.

51. The Re-Notification email and postcard were called a "Reminder Notice." This notice could not be considered the best practicable notice for this settlement:

a. The headline does not carry a call to action, and instead couches the notice as a "reminder" in the largest type phrase in the entire notice;

b. The subhead and first sentence injects the concept "economic loss" to define the lawsuit. The only reason to do this is to de-motivate response;

c. The length of the heading results in the "safety defect" words typically being cut off in inbox "previews" of the incoming email;

d. There is no simple "File a Claim" link in the email;

e. There is no claim form attached to the email or the postcard; and

f. The ability of Class members to get their trigger replaced is buried in the text and not addressed in the headline or any subhead.

52. The Re-Notification radio script is described in Joint Notice of Non-Material Changes to Notice Plan, ECF No. 143, August 31, 2016. The script does not instruct listeners to stop using the rifles in question. In this late-August filing, the parties purported to delete "non-material language" to fit the 60-second time limit, but somehow found room for language that has nothing to do with legal rights: "**Safety has always been a priority for Remington**," the only purpose of which would be to aid Remington's image; and it serves to reduce response. Other than using the words "opt out" and a date—with no explanation—the radio script meets no content requirements of Rule 23(c)(2)(B).

53. Beyond the above problems with the "Reminder" notices of the Re-Notification, a communication that includes new information—a different opt-out and objection deadline—is not a "reminder" at all. The word "reminder" communicates to recipients that they must have already received the information, making the notices misleading and likely to be discarded without acting on them.

54. The Re-Notification social media banner ads do not represent the best practicable message to drive response, nor make the Class aware of any reason to act. The banner ads make no reference to the safety defect—let alone focus on it. They simply display a generic rifle

image with a circle around the trigger—but are devoid of text that mentions a problem with the trigger.

55. As compared to Mr. Messina's political campaign communications, the Re-Notification notices are innocuous communications clearly unsuited to maximize response. They are not impactful mass communications designed to be acted upon.

56. In fact, the effectiveness of both the Original Notice and the Re-Notification have been greatly diminished by language inserted in the notices communicating Remington's insistence that the guns remain safe, even if the triggers are not repaired. This cannot represent the best practicable means of notifying Class members of a settlement offer that communicate value only if the trigger replacement is making them safer. Not only does this language appear unwarranted by the now publicly disclosed revelations as to the defect, but the insertion of the language serves no purpose but to discourage Remington's customers from taking advantage of the settlement. The denial language / softening language / diminishing approach was evident in many of the notice documents:

a. The Reminder Notice email and postcard framed the case as being primarily about "economic loss." This communicates that the trigger is "not that bad" and that the problem is a money loss, not that the alleged defect can cause injury or death.

b. The Reminder Notice and radio script include a Remington denial that the trigger can fire without a trigger pull, and claim that Remington is simply doing this to "**ensure continued satisfaction for its valuable customers**" and to "**serve its valued customers**." This communicates that the rifles are safe and have always been safe, and feeds the idea that this is simply a "lawyer thing" Remington is submitting to, simply to get it over with. It dissuades response.

c. The Re-Notification social media post does not mention a defect at all or any problem with the rifle. The heading "**how well do you know your rifle**" communicates that the user is responsible for his trigger, and should consider replacing his trigger, for some unstated reason. It's unclear whether Remington is even a willing participant in the process.

d. The Original Notices included many examples of language undermining the importance of the trigger replacement. The notices reference "accidental discharge" but do not mention that the triggers in question allegedly can cause, or have caused, injuries and deaths but rather just diminish the "value" and "utility" of the rifle. If there is a defect, an unintentional discharge is no "accident." These notices failed to communicate an urgency to act, by failing to synchronize the notice with reason the lawsuit was brought. The apparently unfounded denials, and the focus on economics, simply serve to squelch claims.

57. A fact that further underscores the importance of maximizing mailings with claim forms included, and which undermines the over-reliance on digital notice banners and social media, is that clicking on any links to the settlement website may have been blocked for many members of the Class. Popular internet firewall software running on millions of American's computers blocks users from accessing sites involving guns. For example, one of the Dell Sonicwall default settings stops users from accessing websites relating to "weapons."[63] **Exhibit FF** shows the splash screen when a Sonicwall user attempts to navigate to the settlement website.

58. Another problem has been uncovered since the Hilsee *Amicus* Letter. The settlement website contains a photo depicting the Walker trigger (http://remingtonfirearmsclassactionsettlement.com/settlement/triggerSelect) that is "*misleading at best and generates tremendous confusion,*" according to Jack Belk, an expert gunsmith, in his Nov. 11, 2016, Supplement to Pollard Objection. He notes that about 98% of Walker triggers are colored BLACK. The photo shows the trigger as SILVER. He indicates that he informed the Angeion Group of this problem on September 21, 2015, but to date the photo has not been corrected and no response was ever provided. In my opinion, images that are misleading can significantly deter claims from Class members who mistakenly believe they are not included.

[63] *See* https://www.youtube.com/watch?v=_LFCg18bzXQ, last visited Nov. 10, 2016.

FALSE REACH AND INLFATED AUDIENCE MEASUREMENT

59. Both Vendor Declarations brush off widespread reports in leading advertising and general media of a $7 billion plus internet banner audience inflation fraud.[64] Yet, Mr. Weisbrot and Mr. Garretson are either blind to it, or choose to deny it:

> *"Mr. Hilsee also bellows of "a great fraud" in the internet advertising market…this is an irresponsible assertion."*
>
> Weisbrot Declaration at par. 18.
>
> *"Mr. Hilsee summarizes the "big story now," a conspiracy theory…This does not warrant a response from Signal…sensational implication…"*
>
> Garretson Declaration at par. 31.

But the banner ad fraud is an undeniable fact. In fact, just as I was writing the Hilsee *Amicus* Letter, U.S. Senator Mark R. Warner and U.S. Senator Charles E. Schumer were writing the Federal Trade Commission about digital advertising fraud and the associated negative economic impact on consumers and advertisers. (*See* **Exhibit K)**, stating:

> *"According to one study, between 88 and 98 percent of all ad-clicks on major advertising platforms such as Google, Yahoo, Linkedln, and Facebook in a given seven-day period were not executed by human beings, but rather by computer-automated programs commonly referred to as "botnets" or "bots."*
>
> Sen. Warner and Sen. Schumer, July 11, 2016 Letter to FTC Chairwoman Ramirez, citing Adrian Neal, Quantifying Online

[64] Hilsee *Amicus* Letter at p. 7.

Advertising Fraud: Ad-Click Bots vs. Humans (January, 2015), Oxford-biochron.com.[65]

60. Beyond the incredibly poor response for such an important notice, it remains unrebutted that significant over-inflation was baked into the supposed 73% reach of the Original Notice—a notice plan that relied heavily on internet banner impressions:

a. Mr. Weisbrot used frequency capping which does not account for the same person using multiple devices. It demonstrates a lack of media knowledge to suggest that after applying a 3x frequency cap "*the standard random reach duplication formula*" could be used such that "*these exposures were taken into account.*"[66] Random reach removes duplication between media not frequency cap audience inflation within the same medium.[67] Frequency capping does not work to limit reach per "person," whether it be 3 times or 1 time. The cap is actually limiting exposure to a device, browser, or user session. This is because frequency capping

[65] The U.S. Senate and Oxford University can hardly be considered mouthpieces of "conspiracy theories." The article continues: "*…over 10 per cent of these bots being of a highly advanced type, able to mimic human behaviour to an advanced extent, thus requiring highly advanced behavioural modelling to detect them.*" The research is current: "*The research was conducted over a 7 day period in early January 2015.*" *See* attached **Exhibit Y.**

[66] Weisbrot Declaration at par. 17.

[67] The random reach formula is a mathematical formula that estimates the overlap between two media, and requires the actual reach of each media to be input: (R1+R2) – (R1xR2). It has no function to suppose cross-device duplication or guess how much duplication arises when cookie-based frequency capping is used. As one researcher put it: "*Within the concept of probabilities, this duplication involves independence between the media that are being consolidated. In other words, the consumption of one media outlet has no influence on the consumption of the other.*" Estimation method for media audience duplication, Galdames, Balmaceda and Carranza, ESOMAR Cross Media Conference, Montreal, June 2005.

works by limiting exposure to devices where a "cookie" has been set. According to one article:

> "*[C]ookies (bits of information specific to a user placed on a user's computer by a webpage) are unable to keep up with the cross-everything habits of real people, and can provide a distorted view of reach and frequency." This means that "if [a] cookie-based measurement tells you your ad reached 100 people, in reality it only reached 42.*"
>
> James Daily, *Atlas Solutions*, Finding Optimal Ad Frequency in a People Based World, Sept. 30, 2015, attached as **Exhibit L**.

b. Mr. Weisbrot and Mr. Garretson do not account for massive ad fraud that inflates audiences by presuming all reported impressions are viewed by humans. To further support the Hilsee *Amicus* Letter, and the data cited by Sen.'s Schumer and Warner, I have attached excerpts from the Wall Street Journal, Ad Age, Adweek, Bloomberg, CNBC and others in **Exhibit M,** with the articles themselves clickable to read the specific examples of banner ad audience fraud in measurement and reporting;

c. Mr. Weisbrot does not account for the fact that many banner impressions would not have been viewable—for example, banners often appear on a website that a user accesses, but the ad is below the screen and the user never scrolls down to it.

The evidence in the Hilsee *Amicus* Letter about Google's reports that only 44% of impressions are viewable has not been addressed in the Vendor Declarations;[68]

d. Mr. Weisbrot provides no transparency about the banner ad buy, raising suspicion that his banners appear on low-quality websites. In fact, increased suspicion surrounds the efficacy of his banner ad programs. I am informed by industry sources that Angeion pays a very low cost per thousand internet impressions (known as a "CPM") to win bids by undercutting competitors. If this is true, it would help explain poor claims performance and demonstrate the inflation of their reach statistics. By paying very low CPMs as Angeion reportedly pays, banner ads would likely appear on sites:

   i. Where advertising inventory is of lower quality;

   ii. That are lower-traffic and lower-reach sites;

   iii. Where viewability falls to very low levels; and

   iv. That have low quality non-advertising content necessary to maintain audience attention and engagement.

Mr. Weisbrot has never provided a list of all the URLs and websites where banners have allegedly appeared;[69] and

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[68] Hilsee *Amicus* Letter at p. 7. *See also* the *Google* revelations attached **Exhibit Z**.

e. The Vendor Declarations fail to refute data showing that, on average, only 0.04% of banner impressions are clicked.[70] A banner containing a few words—words that cannot constitute a valid notice—that is viewed for potentially one second, is virtually useless for Due Process notice in lieu of available means that reach high percentages of people with a rule-compliant notice.

61. Mr. Weisbrot's claims that use of Double Verify is a "*safeguard against fraudulent views/actions*."[71] However, using this service does not mean that fraudulent views and actions do not happen or exist, and does not mean the impressions in the reach promises were viewable. This service reports what it believes are fraudulent ad impressions and non-viewable impressions, which are an unrelenting reality. We do not know if Angeion counted bogus impressions against reach but only *paid* for verified ones, which would save the clients' money but overstate the reach. Because Mr. Weisbrot has not disclosed the insertion orders with

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[69] According to an article by notice expert Jeanne Finegan, "*It is no secret that publishers (websites) reserve higher quality space for these higher cost CPM banner impressions. If CPMs are cheap it's because there are no restrictions on targeting or quality. Each layer of targeting increases the CPM. As a media planner adds specific targeting by geographical area, audience/contextual data targeting, quality alliance, etc., the cost increases. More and more, we see that low cost CPM's impressions are relegated to low-quality websites. Moreover, lower quality translates into fewer online safeguards to monitor viewability or ad fraud, which may include poor ad position and ads served below the scroll, nonhuman traffic, double-dipping, and ad stacking. Sadly, all these unseen ads are still reported to courts as impressions 'served*.'" Think All Internet Impressions Are The Same? Think Again, Jeanne C. Finegan, Law360, New York (March 16, 2016, 3:39 PM ET). *See* attached **Exhibit T.**

[70] Hilsee *Amicus* Letter at p. 7, citing Smart Insights: Average click thru rates for all styles of banner ads: "leaderboard" banners (728x90 pixels), "MPU" banners (300x250 pixels), and "Skyscraper" banners (160x600 pixels). http://www.smartinsights.com/internet-advertising/internet-advertising-analytics/display-advertising-clickthrough-rates/attachment/average-clickthrough-rates-for-different-ad-formats-2016/, last visited 4/27/16.

[71] Weisbrot Declaration at par. 18. Note: Mr. Weisbrot's reference therein to the percentage of people using the internet has no relevance to whether banner audience impression statistics include fraudulent non-human traffic.

digital ad networks, the monies paid for them, the verification reports proving the delivery of impressions, where they appeared and when, or any Google Analytics reports on the actual settlement website traffic over time, no claims of efficacy can be made or verified.

62. Mr. Weisbrot asserts that banners that are not clicked provide value nonetheless and might accrue towards the reach of the campaign. He points out that people who didn't click the banner might choose to go to the settlement website later to read a notice. The problem with this argument is that any of this website traffic and exposure is knowable but has never been reported to the Court:

a. The www.Remingtonfirearmsclassactionsettlement.com website uses Google Analytics, as apparent from a review of the publicly available source code. Google Analytics provides extensive use data on a daily and even hourly basis for every page of a website.[72] *See* a sample Google Analytics report attached as **Exhibit HH**.

b. Mr. Weisbrot has never reported how many clicks-to, or visits or user sessions have been received for each page of the website over time, let alone any other highly detailed user data that is readily available through Google Analytics. This seems to readily refute any claims that the notices or claim forms received views by a large percentage of the Class. The data should be revealed.

[72] *See* https://www.google.com/analytics/analytics/features/ last visited Nov. 13, 2016.

63. The Re-Notification plan, which relies heavily on *Facebook*:

a. Misleads the Court into thinking 3.4 million Class members might be exposed to the *Facebook* campaign by artfully calling the Signal-developed audience of 3.4 million *Facebook* users "putative Class members" or "potential Class members." This suggests that all of this database is *possibly* Class members and implies that all of these people will be exposed to an ad. In fact, Signal cannot know how many Class members are in this database, and Signal makes no indication of what percentage of them will see a banner through however many exposures Signal purchased (undisclosed) on *Facebook*.

b. Fails to acknowledge the fact that only half of rifle owners even use *Facebook*.[73] Reaching 3.4 million class members, *i.e.*, half of all Class members, via *Facebook* would therefore require a gargantuan effort, a domination of *Facebook's* advertising availabilities which would have cost many millions of dollars, which clearly was not done.

Mr. Garretson makes much of the *Facebook* test that supposedly yielded 18,721 clicks, suggesting it outperformed averages. Yet he does not say (a) how many of the *Facebook* test clicks were non-human, and (b) how many were made by the same person clicking more than once. Mr. Garretson, by suggesting non-human "bot" click problems are in the past, is clearly

[73] Hilsee *Amicus* Letter at p. 26.

misinformed.[74] Moreover, he does not say whether his "Clicks-to-Case-Website" total is a misleading misnomer; whether indeed it is inflated with clicks such as "likes" or other "reactions" and "shares" and not clicks where someone went to the case website to read an actual notice.[75] Mr. Weisbrot has not reported how many visits to the settlement website or the notice pages by providing the Google Analytics report to test the Garretson assertion.

64. Regarding the results of the Re-Notification social media campaign:

a. There is a *Facebook* page "Remington Firearms Class Action Settlement" at which test ads appeared in July. *See* **Exhibit N**. No posts show up on it.

b. A deeper search shows two (2) posts not linking back to the settlement *Facebook* page. As of November 14, 2016, the two September 27, 2016 posts about the Re-Notification have fed only 3,952 page "likes" and only 6,746 "reactions." The posts have been shared by only 7,137 people and show only 11,354 "people talking about this." These numbers are miniscule in relation to the 7.5 million-gun Class size. The 977 comments to the post include many negative comments about the registration process, comments that diminish the settlement or reflect a misunderstanding of the defect, and many that could clearly be overcome by not requiring relinquishment of the weapon, in favor of encouraging local dealer and gunsmith repairs, as discussed above. *See* **Exhibit C**, showing screen captures of the two *Facebook* posts sorted by "top" comments.[76]

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[74] The article Mr. Garretson cited to refute any click problem at Facebook was a 2015 article about fake "likes" not fake "clicks" (Garretson Dec. at par. 31), while a 2015 Oxford University study cited to the FTC by U.S. Senators in July cited 88-98% of clicks were fake at major sites including Facebook. In July of 2016, Facebook audience fraud was discussed in the *Wall Street Journal*, Facebook overestimated Key Video Metric for Two Years, Sept. 22, 2016: "*Facebook vastly overstated average viewing time for video ads on its platform for two years…*"

[75] See David Cohen, *Social Times*, Post Clicks, Other Clicks Are Important Metrics for Facebook Page Admins, Too, Aug. 6, 2014. http://www.adweek.com/socialtimes/post-clicks-other-clicks-are-important-metrics-for-facebook-page-admins-too/300388, last visited Nov. 14, 2016; *See also* John Loomer, *John Loomer for Advanced Facebook Marketers*, 3 Facebook Metrics That Don't Mean What You Think They Mean, Oct. 7, 2013, http://www.jonloomer.com/2013/10/07/facebook-metrics-meaning-confused/, last visited Nov. 14, 2016. "*Post Clicks…this includes every other type of click you can imagine (photo view, video play, reporting spam, expanding to read a post, expanding to read comments, clicking profiles within comments, etc*."

c. Oddly, Signal Interactive Media, the firm advocating for the use of *Facebook*, does not appear to have a *Facebook* page of its own. The Garretson Resolution Group has a *Facebook* page, but it has not posted anything about the Remington settlement. Angeion has not posted about the Remington settlement since June 2015.

65. The Weisbrot Declaration reveals a lack of media training or mass-communications expertise. For example, Mr. Weisbrot's discussion of Remington's 22% market share as somehow relating to the "reach" of the notice campaign is irrelevant and misleading:

> *"[I]t is imperative to note that the target class definition used here i.e. Rifle Owners, is over-inclusive, as it includes all rifle owners, not just Remington rifle owners, or just owners of the particular Remington rifles subject to this settlement. This becomes an even more telling statistic when juxtaposed against Remington's 2014 End of Year report, which indicated that the company only had a 22% market share of all rifle sales in North America. The reach percentage achieved in this case and reported to the Court was not*

[76] https://www.facebook.com/permalink.php?story_fbid=1413312222031113&id=1251472158215121

> *reduced by market share, or brand, but rather, was keyed to the entire universe of all rifle owners in the U.S."*
>
> Weisbrot Declaration at par. 10

This statement misleads a reader to believe that perhaps the real reach among *Remington* rifle owners was higher. In fact, market share has no bearing on a reach calculation. If using a target of "all rifle owners" as Mr. Weisbrot claims, concluding that the reach of his magazine plan among all rifle owners "*is firmly 57%*" (if true) simply means that the magazines reached 57% of the Remington rifle owners within that broader target, and nothing more.[77]

66. But Mr. Weisbrot's "*firmly 57%*" magazine plan reach assertion is false. He stated:

> *"Utilizing data from the MRI 2013 Doublebase, the most current data available when the media plan was prepared for the parties' review, shows that the total print reach, measured against the over-inclusive Class definition of "Rifle Owners" is firmly 57%."*
>
> Weisbrot Declaration at par. 11

To the contrary, I have attached the actual 2013 GfK MRI Doublebase report and it shows that the reach of the Original Notice magazine plan was 49.39% of rifle owners. This is attached as **Exhibit O**.

[77] If the universe of rifle owners was 1,000 people, and Remington's share was 22% or 220 people, a magazine plan reaching 57% of the universe would reach 570 rifle owners, 125 or 22% of which would be Remington owners. 125 is 57% of 220.

67. Moreover, there is no legitimate reason to rely on 2013 data that was "*the most recent available when the parties reviewed the plan*." More recent data reflects the audiences at the time the ads appeared. Accordingly, I have attached the now available 2015 GfK MRI Doublebase report on the Original Notice magazine plan, **showing a reach of only 42.23% of rifle owners**, consistent with the fact that magazine audiences dropped precipitously (especially *Parade* magazine as I pointed out in the Hilsee *Amicus* Letter). This data is attached as **Exhibit P**. Thus, the true audience is 35% less than Mr. Weisbrot's figure, which reduces the overall reach in turn.

68. The significance of the false magazine audience data is apparent when one considers that the Original Notice relied upon the notion that 57% of the Class—or 78% of all those reached—were thought to have been reached by magazines, when in fact there was a 35% shortfall. And this does not account for the fact that the no-headline/fine-print design rendered the Original Notice unlikely to be actually noticed by those statistically exposed to them.

69. Mr. Weisbrot erroneously claims he did not violate "black letter law" by mixing target audiences when performing his combined reach calculation for magazines and internet banners. He claims he calculated how effectively both media reached "rifle owners" using IMS software. However, he admits that he *targeted* internet banners to reach a different, much broader target of men 35-64 with a household income of $75k+, but then calculated the reach against "rifle owners." He is therefore making the exact error he protests he did not make. It

does not matter that he claims to have performed more advanced targeting by keyword, contextual, and interests to "ensure delivery" to the Class of rifle owners: In fact, only 57.9% of rifle owners are males aged 35-64, and only 49.4% have a household income of $75k. There is no basis to target a broader audience that included some rifle owners and then measure the whole campaign as if it was all targeted to rifle owners. Because rifle owners are contained within a broader audience than Mr. Weisbrot targeted, one must calculate the reach among the broader adult audience.

70. Mr. Weisbrot claimed that his 40.57% internet banner ad reach was calculated using a program called IMS. But, IMS is a software platform not an audience data source. Mr. Weisbrot does not indicate any data source. He provides no report to back up his clearly inflated assertion. In contrast, comScore is a leading industry standard for digital audiences as the current edition of the textbook "bible" of advertising media planning accurately reports.[78] As proof of that which is cited in the Hilsee *Amicus* Letter, I have attached the actual comScore report verifying my assessment that the **actual statistical reach** of Mr. Weisbrot's Original Notice **banner ad campaign was 12.3% to 12.4%** of adults, **not 40.57%.**[79] *See* **Exhibit Q.**

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[78] *See* Jack Z. Sissors & Roger B. Baron, Advertising Media Planning, (7th ed.), p. 75-76: "*Neilsen Online (www.neilsen-online.com) and comScore (www.comscore.com) are the two most widely used companies that measure the number of visitors to websites. In addition to determining the number of unique visitors, the services can tell how long people stay with each page, how deeply they go into a site, and the number of times they return.*"

[79] Mr. Weisbrot measures his campaign against an audience he did not purchase banners to target. The comScore reports in **Exhibit Q** show the adult reach for Feb. 2015 (12.4% reach) and for June 2016 (12.3% reach).

71. And, based on the factors discussed herein and in the Hilsee *Amicus* Letter that Mr. Weisbrot failed to account for, such as viewability, inflation by frequency capping, non-human viewership, low quality websites, and limited clicks from the banners to the case website, the real reach is much lower still. **The assertion that 40.57% of all the rifle owners in America learned about their legal rights in this settlement from the Original Notice banner ad is incredible.**

72. Mr. Garretson states that "every mass communications program cannot logically be assessed using decades-old industry methods and data."[80] This is false. Reach and frequency analysis is the current method of measuring how many people are exposed to an ad in any medium, and it has been so-recognized for decades. In 1922, the concept of reach in advertising was known, and by 1967 reach and frequency were "traditional dimensions."[81] Today, the audiences of all forms of media (including digital media) is calculated using reach and frequency methodology.[82] Digital media simply makes the *data* that such formulae and tools use readily

[80] *See Id* at p. 110-121: "*Reach is a measurement of audience accumulation. Reach tells planners how many different prospects or households will see the ad at least once over any period the planner finds relevant. Reach is usually expressed as a percentage of a universe with whom a planner is trying to communicate. . . Frequency is a companion statistic to reach. . . Frequency is a measure of repetition, indicating to what extent audience members were exposed to the same vehicle or group of vehicles.*''

[81] *See New Zealand Truth*, April 15, 1922, p.6: "*But no amount of advertising is any good if you do not reach your public*." *See also* Advertising: The Media Need the Message, *New York Times*, September 9, 1967: "*The traditional dimensions of media—reach, frequency and continuity—must be expanded to include a fourth dimension—impact*."

[82] *See footnote* 78, Roger Baron, Advertising Media Planning, preface, p. viii: "*As planners evaluate alternatives, they will rely on the* ***same*** *fundamental measures that Jack Scissors wrote about 30 years ago: coverage, composition, selectivity,* ***campaign reach/frequency****, effectiveness, and cost-efficiency. Planners must understand these basic characteristics of all media, including the new online ventures, to ensure the most effective use of the advertising budget*" (emphasis added). *See also footnote* 78, David Smith, Advertising Media Planning, forward, p. xiii: "***Digital media*** *have* ***learned from their traditional media*** *forbearers the value of having commonly accepted,* ***standard ways of defining and measuring advertising exposure***" (emphasis added).

available, and makes it easier to calculate and report the net number of people exposed to advertising.[83] In fact, Mr. Garretson's Re-Notification plan failed to calculate the reach of its effort, while falsely implying it will reach even half the Class.

73. The greatest disservice the Weisbrot and Garretson declarations do for the Court is (a) falsely paint a picture that the Original Notice plan effectively reached class members, and (b) falsely suggest the Re-Notification would effectively reach class members. This allows the false narrative that the Class must have *chosen* not to participate, and deflects attention from the fact that the great majority of Class members were not effectively reached, if at all, and those who were reached, were misled and dissuaded to file a claim.

RESPONSES TO OTHER STATEMENTS

74. I read the transcript of the hearing on August 2, 2016. The notion that response cannot be significant because of an unwillingness of gun owners to respond to notices is belied by ready examples such as the 820,000 claim response to the *Garza* settlement.[84] We have heard these same arguments in many past cases, for example:

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[83] *See* Scissors and Baron, Advertising Media Planning, p. 75-76, "*[Neilsen and comScore] are considered "passive" measures because the data are collected automatically, without any conscious effort by the respondents*."

[84] This is also supported by the experience recorded from New York City's letter mailed to gun owners, which was responded to by 98% of the recipients as noted in Where will all the rifles go? NATIONAL REVIEW, September 26, 1994, P. 54. *See* ECF No. 127-3.

a. The supposed unwillingness of aboriginal children abused in residential schools by priests to come forward because it would dredge up painful memories;

b. The supposed unwillingness of Holocaust survivors in the former Soviet Union to come forward because identifying oneself would subject a person to anti-Semitism; or

c. The supposition that people who were lead-poisoned as children in public housing would fear exposing themselves to the criminal justice system by coming forward to a court process.

Yet when notice efforts are strong, the parties and notice provider desire to reach them, and the claims process is simple and convenient, claims rates can be strong—as was the case in the above examples. But some notice providers and counsel, after over-hyped notice fails, must argue that weak claims rates do not matter. This is the systemic problem I wrote about in the Hilsee *Amicus* Letter, in which low-bid notice programs are signed-off by vendors pitching them as effective, with inflated promises of reach, in order to win business and capture market share even knowing the claims rate will be low.[85]

75. Mr. Weisbrot expressed in his August declaration that my *In re Holocaust Victims' Assets Litigation* comparison (where I discussed how "reasonable" efforts in major

[85] It is worth noting that another recent phenomenon in claims administration is where a settling party requires a "not to exceed" contract price for claims administration, dis-incenting the administrator from trying to maximize claims.

cases are far beyond what was done in *Pollard*) was not an appropriate comparison to this "economic loss" case. In that light, a different and even more current comparison is worth noting: In *Cross v. Wells Fargo*, the allegation was that Wells Fargo simply "bothered" people with unwanted phone calls. Yet the settling parties asked for extra time to identify the 6.4 million class members so they could physically mail a postcard notice to 80% of those class members—with a claim form—and include pre-paid return postage on the outbound claim form, to maximize claims.[86] So, it should be clear that contrary to the Vendor Declarations, class action notice actually has a higher standard in class actions where class members have received unwanted phone calls like *Cross v. Wells Fargo*, than that which the notice vendors advocated in *Pollard v. Remington*, where a lack of notice likely means future injuries and/or deaths.

76. Mr. Weisbrot dedicates several paragraphs in his Vendor Declaration to the notion that notice activities in a recent handgun defect case, *Carter v. Forjas Taurus*, compares well to the notice activities in *Pollard*. Based on my investigation of the *Taurus* case, this appears false on numerous fronts:

a. There were two (2) *Taurus* notice campaigns that reached 86% and 83% respectively of *Taurus* class members, sworn to by a court-recognized notice expert.[87] In *Pollard*, the Original Notice claimed to reach 73% of the Class,

[86] *See Cross v. Wells Fargo Bank*, Case No. 15-01270, N.D. Ga., ECF No. 55, Sept. 12, 2016. I have attached the Plaintiff's Unopposed Motion To Modify The Preliminary Approval Order in *Cross v. Wells Fargo as* **Exhibit W.**

[87] *Carter v. Forjas Taurus*, S.D. Fla., Case No. 13-24583, Declaration of Jeanne C. Finegan, July 6, 2016.

which as tested in the Hilsee *Amicus* Letter was shown to be grossly inflated. The Re-Notification promised no audience metrics, but certainly reached even fewer Class members than the Original Notice.

b. Unlike *Pollard*, response statistics documenting how many visits to the *Taurus* website occurred were reported to the *Taurus* court: More than 402,000 users (people) during 552,000 visits as of the date of one report.[88]

c. Whereas the *Taurus* defendant provided evidence that it did not possess the names and addresses of class members, *Pollard* has demonstrated that although Mr. Weisbrot swore the Rule 23 requirement to provide individual notice to "*all those reasonably identifiable*" was satisfied during the Original Notice by sending postcards (without claim forms) to 2,571 Class members, it has been revealed during the Re-Notification that Remington actually possessed 1,093,000 contact records including model-specific data from warranty records and service center records.

d. Mr. Weisbrot's argument that the *Taurus* court did not consider response or claims rate is irrelevant because the *Taurus* settlement notices did not solicit claim forms pursuant to the Class notice campaign, and indeed no claim form is required to take advantage of that settlement's free gun repair benefit.

[88] *Id*

e. In fact, *Taurus* was markedly different in that there was no deadline to get a gun repaired in that settlement. Class members can have their gun repaired at any time under that settlement's enhanced warranty benefit.

77. I believe that if the notice vendor in *Taurus* were called to testify, she would rebuke the idea that the volume of notice exposure or the noticeability of the *Taurus* notice efforts were in any way "strikingly similar" to *Pollard* as the Weisbrot Declaration erroneously asserted.

78. A different notice plan now being undertaken raises even better questions about the *Pollard* Vendor Declarations. The parties to a $375 million settlement compensating property owners in a relatively small area around a nuclear plant during in 1989 Rocky Flats, Colorado are using a notice plan that includes direct mail pursuant to an aggressive address-research effort, and nationwide television and other multi-media approaches that "*reflect and incorporate the highest modern communication standards and is reasonably calculated to provide notice that is not only consistent with, but indeed exceeds, best practicable court approved notice programs in similar matters, and is consistent with the Federal Judicial Center's guidelines concerning appropriate reach.*"[89] The *Pollard* benefits were touted as being worth $487 million in the aggregate. That is more than the $375 million *Rocky Flats* settlement; but unlike the *Rocky Flats* case where the real harm already occurred 28 years ago, the *Pollard*

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[89] *See Cook v. Rockwell International*, D. Colo., Case No. 90-cv-00181, ECF No. 2407, July 15, 2016, and accompanying affidavit of notice expert Jeanne C. Finegan.

parties have the burden of reaching Class members with a message that could save their lives, and those of people around them.

79. The Vendor Declarations cite generalized use of media as if such uses bear on the effectiveness of a specific ad campaign.[90] Most households used to read a newspaper in 1950; but that general fact did not mean that a fine print notice in the back pages of a newspaper would be better at reaching people than a notice by mail, especially with the Supreme Court studying notice in *Mullane v. Central Hanover Trust*, 339, U.S. 306 (1950) and finding such publication to be a poor substitute when mailings were available. Similarly, general statistics on the use of email and the internet are irrelevant as to whether a specific email or internet banner campaign will be effective today. Moreover, data shows 41% of adults age 65 and older do not use the internet, nor do 13% of adults overall.[91] For the rest of us, communicating with friends, family, and business associates by email does not mean we open unsolicited emails from bulk senders. Indeed, data herein shows we typically do not. Using the internet does not mean we see or click on the "needles" that are the banners within the colossal "haystack" that is the internet. In fact, multiple class action notice expert studies show digital notice plans often grossly underperform relative to what courts are promised (*See* par. 84-87 below).

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[90] *See* Garretson Declaration at par. 29 and 34-40.

[91] *See* Pew Research Center, Sept. 7, 2016. http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/, last visited Oct. 29, 2016.

80. The notion that generalized statistics on use of the internet tells us how effective *this* electronic ad and email campaign was, is like telling us that a few needles buried in a haystack will somehow expose a significant percentage of the all of people who simply walk by the haystack, let alone even those who glance at it as they go by.

81. Mr. Garretson cites to my 2006 article that was published in the *Tulane Law Review*, entitled "Hurricanes, Mobility and Due Process." He uses my citation therein to a 2003 U.S. Postal Service study, showing that not all mail is opened and read, to suggest I advocated against mailings. In fact, the article dissected the almost wholly displaced lower income audiences who no longer lived at old addresses in the aftermath of Hurricane Katrina to highlight the strenuous efforts including careful research and mailing techniques required to satisfy notice requirements. Mr. Garretson fails to report the following:

a. My *Tulane* article advocated the use of extensive address look-up steps and careful remailing regimens that courts sought in mailed notice campaigns undertaken in the aftermath of Hurricane Katrina, and have routinely required in other cases, because of the importance of mailed notice;

b. The *Tulane* article addressed the difficulty reaching flood-displaced lower income audiences by mail. The *Pollard* audience does not have these characteristics;

c. The *Tulane* article and the Postal study cited therein pre-dated drops in mailing volumes that have taken place and that have today lessened the risks of mailings being discarded due to overloads coming into households;

d. The recent 2014 United Postal Service Household Diary Study shows that 78% of households either read or scan *even* the advertising mail they receive[92]—a far cry from the far lower percentage of email messages that are opened, let alone read:

i. According to data now publicly available from MailChimp, the world's leading email marketing platform, only 22.73% of legal industry emails are opened.[93]

ii. The Direct Marketing Association ("DMA"), dedicated to advancing and protecting data-driven marketing, reveals in its 2015 Response Rate Report the rate at which emails are even opened ranges from a low of 7-8% to a high of 23-24%. *See* **Exhibit 3** to Hilsee *Amicus* Letter.

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[92] See 2014 Household Diary Study, United States Postal Service, http://www.prc.gov/docs/93/93171/2014%20USPS%20HDS%20Annual%20Report_Final_V3.pdf, last visited Oct. 27, 2016.

[93] Average Email Campaign Stats of MailChimp Customers by Industry, April 4, 2016. http://mailchimp.com/resources/research/email-marketing-benchmarks/, last visited April 26, 2016.

iii. Class Counsel themselves acknowledged the futility of email at the same time the Re-Notification recommended email in lieu of physical mail for almost all the contact records revealed by Remington:

> *"When we do email notice, same thing. I don't know about other folks in this room, but I delete a lot of emails without looking at them."*
>
> Eric D. Holland, Transcript of Evidentiary Hearing, Aug. 2, 2016, p. 56, line 6-8.

e. Mailed legal notices are not *advertising* mail, and the Federal Judicial Center has developed and posted outside mailing envelopes to show class action notice practitioners how to overcome the risks of junk mail perceptions (*See* www.fjc.gov, click on the class action notices item); and

f. The older data cited in the *Tulane* article shows that a higher percentage of mailings were opened even then, by far, relative to the current percentage of email notices that are opened, as cited in Hilsee *Amicus* Letter and not rebutted in the Vendor Declarations.

82. The Vendor Declarations also include subjective arguments about the relative effectiveness of other forms of notice such as mail, publication, TV, and radio, as compared to internet banner ads and social media—arguments that courts have not embraced. The arguments attempt to position internet banner ads as no different from these other forms of notice in that they all "*require a class member to engage in a multi-step process.*" This is not correct:

a. For a mailing, the whole notice is physically in the hands of a mailing recipient. No reasonable person goes to their mailbox, grabs the contents and drops it all in the trash without a glance at the envelopes in their hands. Not when tax refunds, jury notices, traffic offenses and gifts from grandma might be in there. Similarly, the whole notice is physically in front of the eyes of a publication notice reader, and readership data only includes people who open or read publications that people pay to read. The broadcast notice (TV and radio) viewer/listener need only sit there to see/hear the entire notice;

b. On the other hand, an internet banner contains only a few words, typically 15 words or so, such that it cannot constitute notice that is Due Process or Rule 23-compliant. The viewer only gets a rule-compliant notice by clicking the banner (if he sees it in view), and average click-rates are well-known to be extremely low (the average click rate is 0.04% of the impressions). Similarly, an email is only read by those who click to open it—if it even arrives in the inbox instead of being captured and then deleted by the SPAM filter, or rejected because of a blacklisted bulk sender, *etc*. Of course, bulk sent email messages are not requested by recipients and in my experience, there is no reasonable expectation that one can lose legal rights by not reading an email from an unknown sender.

83. The Vendor Declarations recite arguments that "*generalized awareness*" from internet banners that are not clicked, and notices that are not subsequently opened, are "*customary and proper*" to count as notice exposure and that this generalized awareness accrues towards effective notice. This is not correct. Quantifiable notice exposure, whether by clicking the banner or later visiting the website, is knowable from actual data:

a. The vendors relying on these methods know how many people click to open notices at websites. These statistics are rarely reported after banner ads are finished, perhaps because they are low and would reveal the reach to have been inflated;

b. Vendors also know how many emails are not reported as ever being opened. This statistic is rarely if ever reported after a notice campaigns is finished, perhaps because they are low and would reveal the reach to have been inflated; and

c. Vendors know how many claims come back from the different forms of notice issued. This has become irrefutable today but still the supposed privacy of their data allows administrators to avoid telling courts what they know: that physical mail outstrips other forms routinely in terms of response:

> *"For example, KCC did an analysis six months ago of all consumer class action settlements that KCC administered where the notice provided to class members relied entirely on media notice rather than direct mail notice… The claims rate in these*

cases ranged between .002% and 9.378%, with a median rate of .023%."[94]

Declaration of Deborah McComb re Settlement Claims, *Poertner v. Gillette*, M.D. Fla., Case No. 12-00803, ECF No. 156, April 22, 2014. (emphasis added)

84. I am not the only expert who is cautioning courts about inflated audience estimates from vendors who are not qualified media experts. In addition to myself in various cases as reported in my earlier declaration in this case, long-time notice expert Jeanne Finegan, president and chief media officer of HF Media LLC, studied a notice plan in *Czuchaj v. Conair*. There she found that a vendor's promise to reach 75% of a class would actually reach 36%. *See* **Exhibit R**. Professor and advertising reach expert Kent Lancaster supported Ms. Finegan in that opinion as noted therein. Notice expert Shannon Wheatman, Ph. D., who started at the Federal Judicial Center participating in development of the FJC's model notice project, and who is now the President of Kinsella Media (which was founded by recognized notice expert Katherine Kinsella), succinctly identified the problem in a recent article published by Kinsella Media to its many clients (*See* **Exhibit S**):

> *"While the industry publicly debates questions of notice—direct versus media notice; the appropriate mix of print, broadcast, and online delivery; acceptable minimum notice reach—a more troublesome trend simmers beneath the surface: increasingly, false information is being reported to courts. Presumably unintentionally, unqualified notice providers are making serious errors in their affidavits and declarations.*

[94] Mr. Weisbrot's former firm is KCC.

Wheatman and Gehring, Accurately Reporting Notice Results, Dec. 2015 (emphasis added).[95]

85. Wheatman and co-author Alicia Gehring (who manages a team of media planners and has 20 years of experience in ad agencies) go on to expose a notice plan in a food class action which a vendor had told a court would reach 70% of the class, in actuality reached only 16% of the class. They explained their findings as follows:

> *"Incorrectly combined online and print media reach by using two different target audiences that could not be combined. Also assumed every impression delivered online would reach a class member."*
>
> Wheatman and Gehring, Accurately Reporting Notice Results, Dec. 2015 (emphasis added).

86. Ms. Finegan has similarly written about over-inflated reach promise. In a recent article, she cites a consumer product class action where the online reach was reported to the court and to the parties as 60% but her analysis showed an actual reach of 9%.[96] This article is attached as **Exhibit T.**

87. Despite the risk of blackballing, trained notice professionals are now coming forward due to the potential for harm to courts and class members if notice problems and abuses

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[95] Shannon Wheatman, Ph.D. and Alicia Gehring, Accurately Reporting Notice Results to Courts, Dec. 2015, http://rustconsulting.com/Insights/Insights-All. Last visited Nov. 17, 2016.

[96] Jeanne C. Finegan, Law360, Think All Internet Impressions Are The Same? Think Again, March 16, 2016, https://www.hefflerclaims.com/wp-content/uploads/2016/03/Think-All-Internet-Impressions-Are-The-Same-Think-Again.pdf. Last visited Nov. 17, 2016.

are not exposed. *Forbes Magazine* ran an article about the *Pollard* case after the Hilsee *Amicus* Letter: "**Banner Ads Are a Joke In The Real World, But Not In Class Action-Land**." In that article, Katherine Kinsella, a leading court-recognized notice expert, acknowledged the systemic notice abuses that lead to low claims-rates:

> *"'Unfortunately what we see more and more is whoever can come up with the cheapest bid and put an affidavit in that it meets standards of due process, that firm will be hired,' said Katherine Kinsella, the recently retired founder of KinsellaMedia, which specializes in legal notification. 'It is a reverse auction…You can't critique anybody else's work publicly,' said Kinsella, who in retirement feels more free to speak. 'You're blackballed.'"*
>
> Dan Fisher, Banner Ads are a Joke, *Forbes*, Sept. 15, 2016.

88. Finally, the Vendor Declarations now attempt to diminish the Federal Judicial Center guidelines. Mr. Weisbrot had embraced those guidelines before the Original Notice:

> "*The notice program provides reach and frequency evidence which courts systematically rely upon in reviewing class action notice programs for adequacy and meets or exceeds the guidelines as set forth in the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, which considers 70-95% reach among class members as reasonable*."
>
> Declaration of Steven Weisbrot, Esq., on Adequacy Notice Plan (*sic*), ECF No. 80-11, Feb. 9, 2015.

After the Hilsee *Amicus* Letter showed the Original Notice had in fact failed to satisfy the FJC guidelines, Mr. Weisbrot stated:

> "*Mr. Hilsee also places excessive reliance on the FJC guidelines which he helped to design.*"

Weisbrot Declaration p. 5.

89. Of course, I showed in the Hilsee *Amicus* Letter and this Affidavit that notice standards were not met in the Original Notice or the Re-Notification. And, contrary to Mr. Weisbrot's recent statement, the FJC Notice Checklist practice standards have been referenced in many recent court decisions as his own former firm has written extensively about.[97] I provided ample evidence that the "best practices" articulated in the FJC Notice and Claims Process Checklist have been embraced by experts, including specifically the long-standing concepts of reach and frequency and the expectation that experts apply them to ensure that notice is strenuous and high-reaching, without inflated reach promises, and that claims processes are convenient and simple, if necessary at all. An article on wide-spread notice expert adoption and

[97] *See* Robert DeWitte, Courts Take Notice of Class Action Settlement Processes, *American Bar Association Section of Litigation*, Feb. 19, 2015, http://apps.americanbar.org/litigation/committees/classactions/articles/winter2015-0215-courts-take-notice-of-class-action-settlement-processes.html, last visited Nov. 10, 2016:

"***The Rise of the Federal Judicial Center's Checklist***. *The increased focus on notice and settlement administration issues can be traced in part back to the rise of the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (2010)… it was recently cited in a Ninth Circuit decision, Laguna v. Coverall North America, Inc., 753 F.3d 918 (9th Cir. 2014), for its guidance on the appropriate circumstances for use of a claims process. The reference to the checklist by such a prominent class action court speaks to its rising prominence, even if it came in a dissenting opinion from a decision that was later vacated in its entirety after a settlement was reached. See Laguna v. Coverall N. Am., Inc., 772 F.3d 608 (9th Cir. 2014). The appropriateness of claims processes is just one of the issues the checklist addresses, and courts have cited it for a wide array of other issues. Some courts have taken to advising parties upon class certification that any notice plan must address the checklist's guidance on both notices and notice plans. See, e.g., Underwood v. Carpenters Pension Trust Fund—Detroit & Vicinity, No. 13-cv-14464, 2014 WL 4602974, at *11 (E.D. Mich. Sept. 14, 2014). On this front, the checklist is comprehensive, offering courts guidance and pros and cons on various forms of notice. In terms of notice plans, one of the more common reasons courts cite the checklist is to validate whether a proposed plan will reach a sufficient percentage of class members, which the checklist suggests is between 70 percent and 95 percent. See, e.g., Swift v. DirectBuy, Inc., No. 11-cv-401, 2013 WL 5770633 (N.D. Ind. Oct. 24, 2013); Spillman v. RPM Pizza, LLC, No. 10-cv-349, 2013 WL 2286076 (M.D. La. May 23, 2013). It also contains guidance on the use of print and electronic media where necessary, cautioning against the use of Internet banners alone for purposes of notice. Courts have taken heed of this admonition. See, e.g., In re Motor Fuel Temperature Sales Practices Litig., No. 07- MD-1840, 2013 WL 139732 (D. Kan. Jan. 10, 2013) (rejecting notice plan relying exclusively on Internet banner ads for some segments of the class).*"

reliance of accepted FJC Notice Checklist principles that I wrote for the U.S. notice field is attached as **Exhibit GG**, a version of which was accepted into Canada's SUPREME COURT LAW REVIEW.[98]

CONCLUSIONS

90. Despite the settling parties' arguments as to the futility of response from this target audience due to Class members' aversion to gun "registration," both (a) the evidence I've provided about how weak the notice was, and (b) the history of other repair processes, tells us otherwise:

a. In 1996, Remington mailed notices in *Garza* that included convenient and simple claim forms, and published attention-getting notices that included clip-out claim forms, and reached far higher percentages of the class than *Pollard*, resulting in claims for 820,000 shotguns or almost 10% of the *Garza* Class. That is a 12600% increase over where *Pollard* response stood in August.

b. In 1982, Remington documents show that during a 1979 recall the company achieved a 13% response rate.[99] Remington enacted a notice regimen that was overwhelmingly reliant on direct consumer notification, and allowed respondents to take their guns to 173 local gunsmiths over a multi-year period.[100] A 13% response rate in *Pollard* would translate to 975,000 rifles, or a 15000% increase over where *Pollard* response stood in August.

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[98] Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist, Chapter in treatise published by LexisNexis Accessing Justice – Appraising Class Actions Ten Years After Dutton, Hollick and Rumley, 23 SUPREME COURT LAW REVIEW 275 (2011). Chapter Author: Todd B. Hilsee, Treatise General Editor: Jasminka Kalajdzic.

[99] *See* Remington company memos in **Exhibit U**.

A great many more people could be made safe under a settlement that avoids known aversion to gun registration, using a notice plan that reaches people effectively.

91. Beyond the relatively small public response to the Re-Notification *Facebook* effort noted above, anecdotal indications as to the effectiveness of the rest of the Re-Notification are not indicative of a strenuous or highly successful effort:

a. Reports of little to no retail dealer postings or dealer awareness of the settlement claims process: (Belk Supplement to Pollard Objection, and ECF No. 148 citing that Richard Barber expressed concern about the lack of notices being posted at sporting goods stores).

b. Mr. Belk also reported "*total confusion on internet discussion groups that regularly have long threads on Remington Walker triggers and what it means to shooters. Between the recalls of the Model 600, the advisory of a bad safety on the pre-82 rifles, and the sudden and well publicized recall of the early XMP*

[100] Of course, the 600 and 660-series recall is still open today, but not disclosed in the *Pollard* notice. *See* https://www.remington.com/support/safety-center/safety-modification-program/remington-model-600-660, last visited Nov. 11, 2016.

triggers, along with the dual recall of M51 pistols and a pump shotgun, the confusion is near complete and in my opinion, that confusion is by design." He states that the "*reaction to a comment about a replacement or recall of the Walker is usually dismissed as 'another Remington deal, who knows*.'"

c. Mr. Belk, a Class member who is in frequent contact with Class members during his gunsmith work, reports that some have heard radio commercials and several have reported the ads are "offensive." He has not heard any airings of the commercials.

92. The confusion and apprehension that Mr. Belk reports is consistent with my analysis of the comments on *Facebook* and elsewhere on the internet. In my opinion, the language used in the notices and numerous other factors discussed above have created confusion and disinterest among Class members. The Class members are not being adequately notified about the potential dangers of the rifles, which Mr. Barber has uncovered and which are now being made public by CNBC and Public Justice. As Mr. Belk states:

> "*[A]t least 90% of the Pollard class could be notified in less than one year by the simple expedient of Remington telling the public and the press the truth of their defective triggers just as they tout a new model of gun. If the same energy, imagination, creativity and money were spent in telling of the defects in Remington's post-war guns as is spent in promoting a new gun, the Pollard class would be notified very quickly.*"
>
> Jack Belk, Supplement to Pollard Objection, p. 7.

This addresses the due process component that should drive class action notice communication: **If the settling parties *really* wanted to actually inform Class members, they would act accordingly**.

93. The settling parties spoke at the August 2, 2016 hearing of an "innovative approach" to notice embodied in the Re-Notification. The reality is that using a small bit of digital media reaches a small fraction of the Class. Notice vendors are selling the "idea" of digital media to capture the minds of good lawyers. The lawyers are sold on the low cost, unaware that one cannot spend so little on this medium without yielding minimal exposure and minimal response. This is today's advertising "snake oil." It is not surprising that on November 14, 2016, the Federal Trade Commission issued orders to eight (8) claims administrators under section 6(b) of the FTC Act compelling them to disgorge response data to various forms of class action notices.[101] The declining response rates to these low-bid electronic notice campaigns have created a race to the bottom that is costing Class members their right to recover in class action cases before being bound by outcomes and unaware.

94. What has gone wrong in this case is no "conspiracy theory." This *Pollard* settlement notice and claims process, and the unsurprisingly low response, reveal the very real systemic notice problems highlighted in the Hilsee *Amicus* Letter. These problems are leaving class members in the cold, notice vendors and the lawyers they mislead in the money, and courts

[101] *See* https://www.ftc.gov/news-events/press-releases/2016/11/ftc-seeks-study-class-action-settlements last visited Nov. 14, 2016.

holding the bag. This should not be allowed to happen in a case where lack of notice means risk of death and injury—including to people who are not even Class members.

95. When it is argued that notice would have a heightened importance if targeting already dead or injured people, but a lower standard since the case is about "economic loss," while ignoring the fact that *Pollard* offers a fix that communicates value because it will save lives—there is a problem. If such a weak notice and a designed-to-fail claims process is Court-approved in *Pollard*, far weaker programs will be adopted in other class actions, and the legitimacy of the opt-out class action device itself will be in jeopardy.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and professional opinions as an expert in this field.

Todd B. Hilsee

SUBSCRIBED AND SWORN TO BEFORE ME this 18th day of November, 2016.

Susan G. Paisley
Notary Public
New Jersey
My Commission Expires 08-11-2021
No. 2411355

EXHIBIT A

THE HILSEE GROUP LLC
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Re**: *Pollard v. Remington***, Case No. 13-00086-CV-W-ODS

Dear Judge Smith:

I am the class action notice expert who has advised the Federal Judicial Center in a *pro bono* capacity at various times over the past 14 years in developing its class action notice communications and claims process practice standards (Model Notices and FJC Checklist) now used throughout courts in the U.S.[1]

For the first time in my career, I am writing as ***amicus curiae***. I am not an attorney. I have not been hired by anyone, nor do I seek any appointment. I have not been asked by anyone to write this letter, but given the importance of the case, and its potential effect on class action notice everywhere, I feel compelled to alert the Court to hidden defects that explain the original notice and claims process failure, and show why the new proposed "reminder" campaign will not cure them.

I respect that the Court may disregard this letter. If the Court would prefer that I retain an attorney and seek leave to file this letter in the form of an *amicus curiae* brief, I will try my best to do so. My only goal is to give the Court missing information pursuant to my independent analysis.

Overview / Why I am Writing

This case, involving alleged trigger defects in some 7.5 million guns that Class Counsel believe could kill class members and their family members at any time, highlights the importance of the best notice practicable requirements of Fed. R. Civ. P. 23. It exemplifies the communications lessons that due process teaches the notice expert: "*The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it*."[2]

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[1] In 2002, I collaborated with the FJC to write and design the Model Plain Language Notices at the request of the Advisory Committee on Civil Rules. In 2010, I worked with the FJC to develop the Judges' Notice and Claims Process Checklist and Plain Language Guide ("FJC Checklist") and the notice and claims sections of the FJC publication Managing Class Actions: A Pocket Guide for Judges, with attribution at www.fjc.gov (click on the class action notices item.) I have been recognized by dozens of courts and lawyers for my credibility during a 26-year career designing, giving, and analyzing the effectiveness of notice to Holocaust Survivors, impoverished lead-poisoned children, abused aboriginal children, and women sick from breast implants, among hundreds of class action cases. I have authored law review articles on notice and due process. I am trained in advertising and mass communications, and have continuously studied the latest notice issues. My case experience, publications, speaking engagements and judicial recognition can be found at www.hilseegroup.org. I analyze notice independently, but I no longer execute campaigns. I have no vested interest in this matter. I am often hired as an expert by plaintiffs, defendants, and as a court-appointed neutral notice expert, most recently for Judge Joan Gottschall, N.D. Illinois. I do not work for serial or professional "objectors." I've never publicly spoken or written about guns or gun control. I'm not politically active. My opinions do not necessarily reflect the opinions of the Federal Judicial Center.

I must inform you, speaking as the expert who worked with the FJC to create the FJC Checklist, that the notice plan did not satisfy the FJC Checklist's guidance. The Court is not to blame for the original notice that has prompted only 7,000 claims for a trigger replacement. Instead, I found that the notice documentation provided to the Court included information that was incorrect and overstated. In addition, key facts were not disclosed.

The notice vendor's methodology was improper and its promises about anticipated effectiveness inflated. In truth, about half the Class or less was even provided an opportunity to know their rights in my opinion, let alone act. Notice amounted to a gesture relative to actual notice standards—in many respects appearing to address Remington's public relations concerns. The parties seem to know the claims "registration" process was doomed.

The "reminder" campaign submission does not address why the original campaign failed; only half of rifle owners use Facebook at all, and these ads will reach far less than that. The rest of the Class members, including those who never claimed or got notice originally, would not have a chance to act. The implication that past political campaign successes can be repeated here, is belied by the fact that the 2012 Obama campaign spent $483 million on advertising, mostly on TV.

There have been large cases where people suffered or risked devastating injuries. Cases where many people lost millions of dollars. There have been defective products with men, women and children at risk. Massive notice programs ensued in those matters, notice that "turned over rocks" to find class members and provide them—often 95% or more of them, 5 times each or more—opportunities to come forward. The minimal notice activities in this case did not match the import of the case.

I believe a class action could—if the claims process and poor notice were not problems—represent the best way to fix the allegedly unsafe guns. But at this point, it would be releasing the claims associated with 7.49 million unrepaired guns, and leave any families of victims later hurt or killed with only the sad option to pursue money for their dead or injured relative, not get his or her life or health back.

> The precedent for notice could be enormous. If the truth about the original effort is not revealed, and the "reminder" notice proposal is approved, the most important class action notice campaigns can be fleeting internet banners with inflated promises. This is part of an alarming trend that threatens class actions, and independent experts do not scrutinize settling parties' vendors' plans. *See below*: How could this happen / why does nobody come forward?

Class Counsel were appointed to represent fathers and mothers of kids; kids like Gus Barber who was killed by a Remington rifle that fired without the trigger being pulled.[3] Millions remain at risk of death and injury according to their complaint. Remington has publicly released documents showing a long-standing awareness that triggers may fire without being touched, and its ability to mitigate this risk. Yet, the original notice and notice plan, and now the "reminder" notice proposal, show defects consistent with systemic notice industry problems that are empowering weak notice proposals. For all these reasons, I cannot be silent.

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[2] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950)

[3] Remington Under Fire: The Reckoning, CNBC, Dec. 8, 2015, http://video.cnbc.com/gallery/?video=3000463701, last visited July 24, 2016; Letter from Richard D. Barber to Hon. Otrie D. Smith, Dec. 10, 2015, Case 4:13-cv-00086-ODS, Document 113, Filed 12/21/15.

In this report I will: a) summarize why the original notice campaign failed; b) discuss those issues in detail; c) explain how it happened; d) explain why the new notice proposals will not cure the problems; and e) provide conclusions and suggestions.

Why did the Original Notices Fail?

Significant problems were not reported to the Court:

1. **Inflated "reach" statistics**. The notice vendor stated the original notice plan reached 73% of the class, but those assertions were not correct.[4] In fact, audience data show that about half the class was reached, and the rest were reached with notices unlikely to be noticed, and which were not compelling. Regardless, the level of outreach was inadequate for a case where lack of notice may be disastrous. Under today's notice standards and FJC guidelines, the notice should be designed to reach close to 95% of the Class, with repetitive attention-getting exposures.

2. **Over-reliance on internet banners.** Small banners are not notices. Only those who clicked on them—which was certainly a small fraction—could have then seen a notice. The vendor would know how many people clicked a banner and then clicked and saw a notice, but those metrics, and many other critical and routine metrics, were not disclosed in court reports.

3. **Poor notice design.** Even the people who were "reached" were exposed to magazines ads that did not follow the attention-getting, large, action-oriented headlines that the FJC models prescribe, and which directly caused only 102 people to respond to them, likely because few noticed them or read them. The notices failed to *highlight* the trigger concern and repair offer.

4. **Failure to exploit individual notice** to all reasonably identifiable Class members despite mailed notice being known—including by the notice vendor—to be the most-responsive notice tactic by far. Many ways to send notice to individuals could have been considered. There are many databases of gun owners, and courts often order non-party assistance in other cases. The million-plus names and addresses that surfaced in the parties' June proposal but were not used originally—perhaps warranty registrants (but not explained)—reveal the original campaign to have failed best notice practices.

5. **Failure to Exploit Press Coverage** despite no press "gag" order issued or agreed to. Class Counsel soliciting, offering, and giving interviews asking Class members to come forward could have made a big difference. This is a newsworthy case—a luxury from a notice perspective—

[4] Declaration of Steven Weisbrot, Esq, on Adequacy Notice Plan (stet), ECF No. 80-11, Feb. 9, 2015; Declaration of Steven Weisbrot on Implementation and Adequacy of Notice Plan; ECF No. 92-9, Sept. 4, 2015; Declaration of Steven Weisbrot; Declaration of Steven Weisbrot, ECF No. 127-4, June 10, 2016.

and failing to capitalize surely caused a large number of Class members to be left unaware and without encouragement to act.

6. **Claims process unnecessary and designed to fail.** Even if notice had reached the Class and been noticeable and compelling, the procedure used a process akin to "registration"—known to be reviled by gun owners—as well as a clumsy claim form. The parties' post-notice argument that low claims were to be expected because of a registration-averse Class,[5] suggests the settlement was structured for poor response.

7. **Vendor statements and omissions.** In multiple declarations, the settling parties' notice vendors have provided incorrect and/or misleading information, and omitted information that if revealed would have helped the Court understand the weakness of the notice plans and require the correct improvements.

8. **Did not Satisfy FJC Checklist and "Norms" for Important Notice Programs.** Despite the vendor's statements that notice satisfied Federal Judicial Center guidance, it did not.

Discussion of Problems

INFLATED REACH STATISTICS / OVER-RELIANCE ON INTERNET BANNERS

Every mass communications program can be objectively assessed using decades-old advertising industry methods and readily available audience data to answer a basic objective question for courts: *Out of the total universe of class members, what percentage will the notices reach and provide an opportunity to act on rights*? That is the "reach" of a notice effort. For due process communication—unlike a commercial product campaign and unlike a political campaign—broad and fair coverage of as many different class members as practicable is critical. Every class member deserves the same opportunity to read about, understand, and act upon his or her rights. It cannot be whisper down the lane. Exposure to a blurb or a slogan is not exposure to a notice.

Conversely, In a commercial ad campaign, the marketer cares only about a good return on his advertising dollars. He can "fish where the fish are," and only advertise to a narrow audience as long as he makes money and increases sales, relative to his advertising investment. In a political campaign, the candidate builds awareness and positive image. Tens of millions of dollars are spent to influence the 41.9% of eligible citizens who vote.[6]

[5] Joint Supplemental Brief Pursuant To The Court's Order Of December 8, 2015, ECF No. 127, June 10, 2016.

[6] U.S. Census Bureau, Current Population Survey, November 2014. https://www.census.gov/content/dam/Census/library/publications/2015/demo/p20-577.pdf, last visited July 27, 2016.

For these reasons, reach has become the standard objective tool to measure class action notice effectiveness, and this has been so for decades.[7] The FJC, a great many courts, and qualified notice professionals have recognized this. All media, including digital media, is measurable.

1. The vendor opined that ads in certain magazines and internet banners appearing on websites reached 73% of the Class but these calculations cannot be replicated. My study shows:
    a. The magazine portion reached only 48-49% of rifle owners depending on the GfKMRI audience study utilized.[8] This is not in the vendor's reports.[9]
        i. The magazines did not reach high audiences. The gun-related magazines skew heavily male, and none reach more than 12% of class members. Magazines have dropped readers heavily, especially the larger ones, Parade and Athlon.
        ii. The magazine selections focus on men, while the 2015 Gfk MRI study shows women comprise as many as 30% of rifle owners.
        iii. Many large geographic areas of the country were reached to a substantially lesser extent than others. Parade is a supplement inserted in Sunday newspapers—and many large, well-read newspapers do not carry Parade. Major areas where the largest newspaper does not carry Parade include:
            - New York – New York Times
            - Houston – Houston Chronicle
            - Phoenix – Arizona Republic
            - Honolulu – Honolulu Star Advertiser
            - Detroit – Detroit Free Press, or Detroit News
            - Louisville – Louisville Courier Journal
            - Cincinnati – Cincinnati Enquirer
            - Des Moines – Des Moines Register
            - Nashville – Nashville Tennessean
            - Milwaukee – Milwaukee Journal Sentinel
            - Indianapolis – Indianapolis Star

[7] *See* Analysis of the FJC's *2010 Judges' Class Action Notice and Claims Process Checklist and Guide*: A New Roadmap to Adequate Notice and Beyond, CLASS ACTION LITIGATION REPORT, 12 CLASS 165, 2/25/2011; *See also* Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist, Todd B. Hilsee, SUPREME COURT LAW REVIEW 53 S.C.L.R.(2d) 275, (2011)

[8] GfK MRI is the leading media audience service. Every major national consumer print vehicle – approximately 225 magazine and national newspaper titles – subscribes to its audience surveys. All the major broadcast and cable networks, the largest radio stations and networks and the most established Internet players rely on the surveys. Digital measurement services focus on counting audiences. The survey excels in counting and understanding them. Over 450 U.S. advertising agencies – nine out of ten – subscribe to the Survey. Gfk MRI is the research gold standard for the print industry and a powerful resource for consumer and market insights.

[9] GfK MRI Spring 2015 (latest) and GfK MRI Spring 2013 Doublebase (cited by notice vendor).

Since Parade was the largest audience publication on the list of chosen publications by far, the reach within the above areas, and often within the entire state or surrounding in which these major newspapers are located, was greatly diminished.

b. Two different target audiences were blended ("rifle owners" for print media; men 35-64 with a household income of $75,000+ for internet banners). These target audiences cannot be mixed. The "rifle owner" audience in MRI includes 30% women. Only 23% of rifle owners are men 35-64 with a 75K+ HHI. The reach of one cannot be projected to the other and will inflate the reach improperly if done.

c. Mixing targets in different data sources is incorrect advertising media methodology and leads to inaccurate reach inflation. Instead, a common broader target that contains the class members and is available in both audience sources must be used.

d. The report citing 38 million "impressions" sounds impressive but does not bear upon the net reach of the effort. The key data should be disclosed, including what was ordered, what appeared, and on what websites. Nonetheless, comScore data shows the reach of the internet portion to have been at best only 16.5%-17.4% of the chosen target of men 35-64 audience with a household income of 75k+.[10]

e. The target was poorly chosen. Only 57.6% of rifle owners are males aged 35-64, and only 49.4% of rifle owners have a household income of $75,000 or more. The rest of the rifle owners fall outside this narrow demographic. As a result, it is necessary to calculate the reach of the internet banner ads against the wider adult population that contains class members. ComScore data shows that the internet banner ads reached only 12.3-12.4% of adults 18+.[11]

f. When the internet banner target of men 35-64 with household incomes of $75,000+ is further scrutinized, one finds that only 22% of rifle owners fall within this target. Many more are either older than 64 or younger than 35, and most are less wealthy. The narrow age and high income target inflates the reach, while discriminating against lower income class members, and especially senior citizen Class members.

g. The internet reach figures above are subject to further reductions to determine the true internet banner reach. While disclosing only one lump-sum gross "impressions" figure, one must realize that:

[10] Top advertisers, agencies and publishers rely on comScore as the standard currency for online measurement. comScore's Unified Digital Measurement methodology provide full insight into a site's total audience, offering global coverage, reporting on more than 250,000 entities worldwide with audience measurement in 44 countries and 6 regions. By measuring audience composition and performance within key user segments, comScore studies a variety of demographic, lifestyle, product ownership and behavioral characteristics, allowing advertisers to compare online with other media using traditional metrics such as reach, frequency and GRPs.

[11] comScore February 2015, and comScore June 2016.

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i. "Frequency capping" must be accounted for. This practice saves money by limiting the number of times a banner appears, but falsely inflates reach by not taking into account the fact that the same person can see the ad on several different devices and be incorrectly assumed to represent different people.

ii. According to Google, ***only 44% of banner "impressions" are actually viewable***.[12]

iii. A great fraud is being revealed right now in the internet advertising business. Major advertising industry sources—*Ad Age, AdWeek, Bloomberg BusinessWeek,* the *Wall Street Journal* and many more—are now reporting that upwards of ***80% of "impressions" are not viewed by humans*** but instead are viewed by robots or are outright fake.[13]

iv. Even if all non-human and duplicative viewers are factored out, the resulting impressions are supposedly "viewable." However, that term is defined as follows: "***A display is considered viewable when 50% of the ad's pixels are in view on the screen for a minimum of one second***."[14] That is a weak standard to rely on for due process communication in any class action that will bind people by their inaction and silence—especially one where inaction may kill.

v. Then, if non-human viewers, duplicative exposure, and non-viewable impressions are factored out, the reality is that a tiny fraction of internet banner impressions are clicked on. The latest "click thru" rates for internet display ads is an average of 0.04%.[15] This is significant because the short and vague

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[12] https://think.storage.googleapis.com/images/infographics/5-factors-of-viewability_infographics.pdf, last visited April 26, 2016

[13] **The Alleged $7.5 billion Fraud in Online Advertising**. MOZ, June 22, 2015, https://moz.com/blog/online-advertising-fraud, last visited April 28, 2016; **Is Ad Fraud Even Worse Than You Thought? Bloomberg Businessweek Seems to Think So**. Ad Age, September 25, 2015, http://adage.com/article/the-media-guy/ad-fraud-worse-thought/300545/, last visited April 28, 2016; **How Much of Your Audience is Fake? Marketers thought the Web would allow perfectly targeted ads. Hasn't worked out that way**. Bloomberg Businessweek, September 25, 2015, http://www.bloomberg.com/features/2015-click-fraud/, last visited April 28, 2016; **What's Being Done to Rein in $7 Billion in Ad Fraud**. AdWeek, Feb. 21, 2016, http://www.adweek.com/news/advertising-branding/whats-being-done-rein-7-billion-ad-fraud-169743, last visited April 28, 2016; **Inside Yahoo's troubled advertising business**. CNBC, Jan. 7, 2016, http://www.cnbc.com/2016/01/07/yahoos-troubled-advertising-business.html, last visited April 28, 2016; **Ad Fraud, Pirated Content, Malvertising and Ad Blocking Are Costing $8.2 Billion a Year, IAB says**. Ad Age, Dec. 1, 2015, http://adage.com/article/digital/iab-puts-8-2-billion-price-tag-ad-fraud-report/301545/, last visited April 28, 2016; **No More Ads**. Wall Street Journal, February, 17, 2015, http://blogs.wsj.com/cmo/2015/02/17/cmo-today-apples-watch-is-coming-soon/, last visited April 28, 2016.

[14] Media Rating Council

[15] Average click thru rates for all styles of banner ads: "leaderboard" banners (728x90 pixels), "MPU" banners (300x250 pixels), and "Skyscraper" banners (160x600 pixels). http://www.smartinsights.com/internet-

"headlines" that are possible to display in small internet banners are not themselves Rule 23-compliant notices. Only the notices actually seen by the precious few people who click the banners comply with Rule 23.

h. The reach of the internet banners cannot be added to the reach of the print media. That is because a percentage of those reached by the print notices also would be exposed to internet banners. Thus the internet banners have a marginal incremental effect on the reach provided by the magazines.

i. Overall, based on a review of comScore data for the impressions and webs services indicated, my opinion is that the original notice campaign reached just over half the class if one counts the fleeting internet banners as notice exposures. If one counts only those who clicked the banner and then opened one of the notices at the website, then I believe the true overall reach was not much more than the 48-49% reach provided by the magazines. The click rates are known and should be reported.

POOR NOTICE DESIGN

2. Even for those Class members reached, the notices as designed were not "noticeable."

a. The publication notice had no headline that would call itself to the attention of readers. Advertisers and advertising agencies understand this is required. For example, one may view the ad as it appeared in Athlon Sports & Life at http://magazine.athlonsports.com/publication/?i=260788 and see the contrast from surrounding ads and articles. This gives great concern that it would have gone largely un-noticed and un-read. Compare this publication notice to the FJC model summary notices at www.fjc.gov.

b. There is no advertising reason to design a headline to appear as small as the body text of the notice except to cause audiences not to notice it or engage with it.

c. The notice as written reduces safety concerns about the guns, which would have caused fewer people to seek replacement, less money being spent by Remington, and fewer potential deaths and injuries being prevented.

d. The words of the headline or any other part of the notice did not generate a compelling reason to read and act. The closest thing to a headline was a generic phrase "**LEGAL NOTICE OF CLASS ACTION SETTLEMENT**" at the top of the notice.

e. The only sentence that is Remington-specific is no more prominent than an ordinary sentence of text. It reads "If you own certain Remington firearms, you may be eligible

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advertising/internet-advertising-analytics/display-advertising-clickthrough-rates/attachment/average-clickthrough-rates-for-different-ad-formats-2016/, last visited 4/27/16.

for benefits from a class action settlement." This will not alert a gun owner to the real reason they should read the notice. In this instance, why not:

A class action settlement will replace the trigger in 7.5 million Remington rifles. Read this notice to learn about your rights.

f. As also suggested by the FJC model notices, a prominent "call out" box might have read:

Act now to have your trigger replaced – the case alleged the triggers may fire without being pulled.

g. I don't believe either example headline shown here, nor the combination of them pre-supposes that any judgment on the merits has been rendered. They are simply noticeable, compel readership, and are response-oriented.

h. The volume of guns involved signifies the importance of the notice, and specifying the trigger problem and solution make it relevant and compelling for the reader.

i. One might even have expected to see Class Counsel propose, and seek court-approval if Remington did not agree, even more attention-getting and compelling language as a special subhead or callout box. For example:

Remington 700 and Seven bolt-action rifles could accidentally discharge and cause injuries or death. STOP USING YOUR RIFLE.

FAILURE TO EXPLOIT INDIVIDUAL NOTICE

3. Individual notice by physical mail is widely known by notice administrators—including the notice vendor in this case—to be the most effective and responsive means of notice. However:

a. The original notice campaign consisted of postcard notices to 2,571 class members who had paid for a trigger replacement. Thus these notices (to .034% of the class) would not have accrued towards reducing unintended trigger discharges among any of the triggers that were never repaired.

b. The notice program apparently did not include warranty card names and addresses that Remington would have. *See* sample Remington warranty card at **Exhibit 1**.

c. The settling parties now indicate they have contact information for at least 1,093,000 individuals, in Remington's own databases, though the exact source is unclear. These potential Class members should have received a notice in the mail to begin with; and a physical mailing should have been sent to all available physical addresses, with emails sent only to those for whom a physical address was not available.

d. If claim forms were included in the mailings instead of requiring recipients to actively go and then get a claim form, the response would have been significantly increased.

e. The declarant for the notice vendor co-authored a publication stating that physical mailings with postage-paid tear-off and return claim forms attached are more responsive than email and postcards:

> *"The following are the most common types of e-mail and direct-mail notices and claim forms.* ***They're listed in order of least to most likely to increase the number of claims filed*** *in a settlement:*
>
> - *E-mail notice*
> - *Single postcard summary notice*
> - *Full notice and claim form*
> - *Full notice and claim form with return envelope*
> - *Full notice and claim form with postage-paid return envelope*
> - *Double postcard notice with tear-away claim form*
> - *Double postcard notice and postage-prepaid tear-away claim form"*
>
> Class Action Settlement Administration for Dummies, KCC Special Edition, (emphasis added), co-author Steven Weisbrot.

f. This responsiveness of physical mailings over other means is supported by:

i. Data recently provided to the Federal Trade Commission by the nation's oldest claims administrator, showing that all forms of stand-alone mailed notice greatly outperform email notice and all other forms of publication notice including internet banner ads. Generally, the data indicates, that mailed notice generates between an 800% and 3000% response increase relative to digital ads and 375% to 800% relative to email. Based on public information,[16] the FTC is currently undertaking a review of factors that determine notice effectiveness and resulting claims rates. *See* **Exhibit 2.**

ii. The Direct Marketing Association, the world's largest trade association, dedicated to advancing and protecting data-driven marketing, reveals in its 2015 Response Rate Report that response to direct mail advertising (3.7%) is 18500% better than internet display (0.02%) and 3700% better than email

[16] https://www.regulations.gov/#!documentDetail;D=FTC-2015-0055-0001, last visited April 27, 2016.

(0.1%).[17] *See* **Exhibit 3.** These figures pertain to commercial solicitations seeking a recipient to buy something. Therefore, a mailing from a court offering free trigger replacements to ensure a safe gun should garner an even higher response rate.

g. The settling parties referenced a *National Review* news article in their June 2016 filing.[18] The article states that 98% of the gun-owning mailing recipients responded to a mailing by New York City:

> "*These owners received letters from the Police informing them they had three choices: remove the rifles from the city limits, render them inoperative, or turn them into the Police. The compliance rate was fantastic—98% of the people on the list mailed in the forms.*"

The article discusses that the follow through—*i.e.*, those acting on the three choices—was less than promised by the respondents in their forms. But the relevant point for the Court here is that response to a mailing could be very high. The action the Court is requesting, "get a free repair of a potentially dangerous weapon," is not off-putting relative to NYC's "get rid of your gun."

h. Despite the relative importance of getting convenient response-oriented mailings directly into the hands of these class members, the notice plan did not use names and addresses held by third-parties that may be able and even willing to help get notices to class members if a request, or Order, were issued by the Court. For example:

i. Through the dealers and retailers that Remington sells through asking them to send notice mailings to all known customers who own the Remington guns at issue, report their efforts, and be reimbursed for their costs. All federally licensed dealers hold ATF form 4473's on purchasers, providing an address that, even if old, can be updated to current addresses through public sources as notice mailing best practices (cited in the FJC checklist) call for.

ii. Through the Bureau of Alcohol, Tobacco, Firearms & Explosives directly, which has captured and created a repository of records from federal firearms licensees that have gone out of business:[19]

> "*Out-of-Business Records: FFLs that discontinue business are required by law to send all firearms transaction records to the [ATF's National Tracing Center] NTC. Out-of-business records are integral in the firearms tracing process. The NTC receives an average of 1.2 million out-of-*

[17] 2015 Response Rate Benchmark Study, DMA and Demand Metric, March 2015.

[18] National Review, Sept. 26, 1994, Page 56, ECF No. 127-3, June 10, 2016.

[19] Bureau of Alcohol, Tobacco, Firearms and Explosives, National Tracing Center Fact Sheet. https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center, last visited July 27, 2016.

> *business records per month. Since 1968, ATF has received several hundred million such records, and its Out-of-Business Records repository is the only one of its kind in the world.*"

iii. Through the NRA, which reportedly possesses databases of the names and addresses of millions of gun owners.[20] Name, mailing address, and email address are required fields in NRA contact forms and membership forms.[21]

iv. The NRA privacy policy states that it allows third parties to use its lists:

> "*We compile lists for communications and marketing purposes. We will provide that information to NRA affinity partners who we believe provide goods and/or services that might be useful to NRA members*."[22]

It would be surprising if the NRA refused to view the Court as an appropriate "affinity" partner if requested, let alone if ordered; or that Remington would not be an affinity partner. Remington could support this to ensure Class members received notice so that it could receive a closure from this settlement that would not be subject to collateral attack.

v. While the NRA probably does not have manufacturer and model numbers of guns associated with each member or mailing list entry such that a physical mailing would be over-inclusive, it would not be expensive to send email notices to their entire list, even if that list is over-inclusive.

vi. One of the earliest missions of the NRA involved rifle safety, so their refusal to comply with a Court request (or Order) to assist with a safety notification would be counter-intuitive.[23]

i. The notice vendor has previously advocated subpoenas seeking the assistance of third-parties in class action cases, citing other cases where other courts have done the same:

> *"Additionally, Plaintiff's counsel could propose a notice plan that includes serving subpoenas on retailers where the Pre-Cold Medicine is sold to consumers. These subpoenas would seek consumers' e-mail addresses from the retailers' loyalty card programs – for known purchasers of the Pre-Cold Medicine – to effectuate individual notice to class members. In fact, I understand that this precise mechanism for identifying class members was recently utilized by Chief Judge George H. King of the United States District Court for the Central District of*

[20] *See* Big Surprise, the NRA keeps a mailing list, http://blog.timesunion.com/guns/big-surprise-the-nra-keeps-a-mailing-list/2490/, last visited July 24, 2016.

[21] https://joinnra.nra.org/join/join.aspx, last visited July 25, 2016.

[22] https://membership.nrahq.org/privacy.asp, last visited July 25, 2016.

[23] https://home.nra.org/about-the-nra/, Last visited July 25, 2016.

California in Forcellati v. Hylands, Inc., C.D. Cal. Case No. CV 12-1983-GHK (MRWx), Dkt. No. 155, to provide direct mail or email notice to more than 800,000 purchasers of six homeopathic cold and flu remedies for children from records subpoenaed from retailers' loyalty card programs. Similarly, in Ebin v. Kangadis Food, Inc., S.D.N.Y. Case No. 13-CV-2311, Dkt. No. 96, Judge Jed Rakoff of the Southern District of New York used the same procedure to provide individual notice to nearly 200,000 olive oil purchasers."

Declaration of Steven A. Weisbrot in Support of Plaintiff's Motion for Class Certification, April 2, 2015, *Melgar v. Zicam*, E.D. Cal., Case No. 2:14-cv-00160-MCE-AC.

j. It is certainly possible to accommodate mailing list confidentiality issues when seeking to use mailing lists held by others:

   i. Lists held by third parties can be provided to "vendor A" without disclosing the nature of the case or the sources of the names.

   ii. Notices can be printed, stuffed into blank envelopes, and sealed by "vendor B."

   iii. Vendor B can send the sealed envelopes to vendor A who can apply the addresses and mail them by first class mail.

   iv. Pharmaceutical drug cases where patient privacy is a concern have utilized approaches such as this when necessary, and an approach could be used to satisfy gun owner "registration aversion" and mailing list confidentiality concerns.[24]

k. The notice vendor's website references many cases and orders where courts enlist third-parties to assist with the sending of mailings.[25] In virtually every securities fraud class action—the most common class action settlement there is—non-party nominees are ordered by courts to assist by either a) sending mailed notices to the beneficial holders if they wish to keep their data confidential, or b) providing the names and addresses to the administrator for the administrator to effectuate a mailing. These orders typically accommodate reimbursement of expenses to help the court fulfill its critical individual notice obligations. For example:

   i. *Larson v. Insys*, D. Ariz., Case No. Case No. CV-14-01043-PHX-GMS

[24] *See* for example, *In re Serzone Products Liability Litigation*, 231 F.R.D. 221 (2005). This settlement provided substantial payments for a small subset of patients who had suffered injuries out of a large class of drug takers. Notice reached 80% of all purchasers through 370 million national impressions and used multiple sources of mailings to reach a far higher, though not precisely calculable, percentage of the injured patients, many of whom had come forward already, with the court employing careful privacy controls on the mailings, and resulting in a high percentage of the injured patients claiming payments.

[25] *See* http://www.angeiongroup.com/cases.htm, last visited July 22, 2016.

ii. *Brown v. China Integrated Energy*, C.D. Cal., Western Div., Case No. CV 11-02559-BRO (PLAx)

iii. *Anderson v. Polymedix*, E.D. Pa., Case No. 2:12-cv-03721-MAM

iv. *In re Fuqi International Securities Litigation*, Case No. 10 Civ. 2515 (DAB)

l. The modest 102 notices that were mailed to those who saw magazine ads and posters,[26] is evidence that the magazine and poster notice effort was ineffective at producing response, not evidence that mailings increased overall effectiveness.

FAILURE TO EXPLOIT PRESS COVERAGE

4. Response suffered from bypassing the advantage of a newsworthy case to secure compelling news coverage. Several key aspects are concerning in this regard:

a. The purpose of the press aspect of a settlement notice plan is to seek the most coverage and the most effective coverage. Here, effective coverage could have come by highlighting the urgency to repair that Plaintiffs cited when they filed their complaint demanding a recall, and which they still sought in the complaint when they settled. Indeed, the notice vendor hyped the press release component of the settlement as "*further alerting Settlement Class members of the Settlement Agreement*."[27]

b. From what I can see, the Court was not shown the joint press release for approval despite the settlement agreement indicating the parties would seek court-approval of notice documents.[28] Despite the complaint seeking a recall, the press release mainly characterized the complaint as having sought "*economic losses for the alleged diminished value of the rifles, along with other equitable relief*." The press release represented a cleansed version of the complaint, and blandly summarized the settlement, saying it "*would resolve two economic class-action lawsuits*." This messaging marginalized the sense of import among reporters and class member readers. The release also read, "…*to ensure continued satisfaction for its valuable customers, Remington has agreed to settle*…" This language, on top of other language highlighting Remington's arguments about safety ("*Remington believes that the trigger mechanisms are safe and has vigorously defended both lawsuits*"), would have reduced the perceived significance among news outlets.[29] The headline made no mention of the

[26] Declaration of Steven Weisbrot on Implementation and Adequacy of Notice Plan, ECF No. 92-9, Sept. 4, 2015, at para. 19

[27] *Id* at para. 20.

[28] Second Amended Settlement Agreement at paragraph 58. "*The text of the notices and the mechanisms for distributing the notices shall be subject to the approval of the Court*." ECF. No 86-1, Apr. 8, 2015.

[29] http://www.prnewswire.com/news-releases/preliminary-approval-granted-to-proposed-settlement-by-remington-arms-company-300105305.html, last visited July 24, 2016.

trigger replacement or the volume of guns, the specificity and importance of which would have grabbed editors' and reporters' attention.[30]

c. The settlement agreement does not require Class Counsel to remain silent in the press. There is no "gag" order that I am aware of. And yet, the press release includes a sentence announcing an intent not to comment in connection with any news outlet actually running a story: "*The parties do not intend to comment further until the Court issues a final ruling*." A plaintiffs' lawyer's name is listed in the press release as a "contact" but the only reason to include a contact is so that media can get a quote and understand the importance of a story. When media actually call the designated contact—which is the rare luxury of a newsworthy case—the opportunity to engage the reporter must be capitalized on in order to pitch a bigger story and more prominence to help class members, and to ensure an accurate understanding of the rights and options that Class members have.

d. When CNBC aired a feature TV story in December—the proverbial "home run" of publicity for a settlement—the reporter says, "*The Plaintiffs declined to comment for this story*."[31]

e. It's one thing to navigate a settlement process where Remington—trusted by gun-owners—maintains the guns to be safe in juxtaposition to the settlement offer to replace triggers as a result of an alleged defect. It's quite another thing for Class Counsel to not comment, when speaking up would serve Class members interests.

f. In this vacuum, it was left to Richard Barber, a gun owner, the former expert in the case, and father of Gus who was killed, to make a statement that was clear, neutral, compelling, non-judgmental, not conclusory, and that did not violate or disparage any term of the settlement. None of the lawyers would have been prohibited from making such a statement to any member of the media they possibly could get to listen them:

> "*If you're on the fence, do your homework, and even if you're on the fence after reviewing the information that exists today, just out of caution, why not have your rifle retrofitted with a trigger to prevent any chance of you, your wife, your children, your friends from being maimed or killed*."[32]

The settlement needed many more such appearances and comments, without any "don't worry they are safe" messaging to undermine them, in order to make an impact on claims under the claims process the parties have in place.

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[30] The headline read "Preliminary Approval Granted to Proposed Settlement by Remington Arms Company."

[31] http://video.cnbc.com/gallery/?video=3000463701, last visited July 24, 2016.

[32] http://video.cnbc.com/gallery/?video=3000463701, last visited July 24, 2016.

g. The "source" of the press release was listed as "Angeion Group" which may have diminished the perceived legitimacy of the release to that of a solicitation. For a court-approved press release, the "source" can be the Court. This legitimacy can be important in order to increase the number of appearances in news media and credibility among readers.

CLAIMS PROCESS DESIGNED TO FAIL

5. The claims process was a hurdle that squelched claims. For example:

a. In assessing claims process issues, I first look at whether a claims process is necessary, and if so, how to ensure the process and claim form are as streamlined as possible. After ensuring that the reach of the notice campaign, and then the clarity and simplicity of the notice itself are not hurdles and limits on claims participation, the objective is to establish claims procedures that do not interfere with a 'natural' claims rate, so that the process itself does not become a variable that limits claims. The FJC Checklist calls for avoiding claims processes when they are not necessary.

b. The parties chose a process with a claim form seeking name, address and gun serial number—akin to a registration which many gun owners strongly disfavor. Also the process requires that one must mail his/her gun away. The parties apparently knew this process was unfavorable based on their filing last month arguing that the low claims rate should not have been a surprise, by citing Class members' aversion to a registration-like process.[33] So why did they agree to have one?

c. If Class members could simply take guns to their local dealer, such as to the dealer they purchased the gun from, or any Remington dealer, I believe the response would have been far greater. Such dealers could be trained and reimbursed for their expenses. They might also have relished the opportunity to interact with gun owners.

d. A report stating that 669 vendors sent customers' guns to Remington to have triggers repaired,[34] suggests that dealers could have been a legitimate conduit for customers to take in guns, get them fixed and return them, in order to avoid a central registry and obviate gun owners' concerns.

e. To maximize outreach and claims, as a case of this magnitude and importance should, the notice plan could have utilized outreach coordinators to reach out to dealers, set up claims procedures, and train them to assist the Court.

f. If the new batch of contact information the parties have proposed for their "reminder" campaign were gleaned from a Remington warranty card database, that begs the question: why can't those Class members simply be deemed claimants and sent a

[33] JOINT SUPPLEMENTAL BRIEF PURSUANT TO THE COURT'S ORDER OF DECEMBER 8, 2015, ECF No. 127, June 10, 2016, at page 5.

[34] Declaration of Steven Weisbrot on Implementation and Adequacy of Notice Plan, ECF No. 92-9, Sept. 4, 2015.

postage paid box and instructions, or a voucher, as appropriate? High participation rates come from convenience and eliminating burdens that are not necessary. If the new contacts are not from warranty registrants, where is the warranty registrant data?

g. If a claim form was absolutely necessary, the forms used in the case were too confusing and lengthy. There were 16 pages of forms that could have been two to three.

i. A separate form for each model number bound in one PDF created confusion, excess length and the appearance of complexity. A more sophisticated organization of the information would have greatly increased claims.

ii. If there was just one spot to provide a serial number, the claims administrator could have determined which benefits apply to that gun. Thus, every model of gun could have used the same form instead of many forms if the rest of the necessary information was reorganized and streamlined.

iii. The forms contained unnecessary redundancy. For example, in ECF No. 92-2, on page 8 of 17, the lengthy explanations of the implications of choosing either yes and no are identical and confusing. Redundant information fatigues claimants and often reflects carelessness or willful intent to deter claims.

iv. The forms create confusion. For example, in section 4, “benefit election,” a reasonable reader who selected “yes” to the question whether an accidental discharge took place, could understand that repair/replacement applies to those who select “no,” in as much as the “I want to receive pre-paid shipping tags…” language is only associated with the “no” box.

v. The first 4 pages of the 16-page claim form reflected the modest $12.50 and $10.00 voucher offers. This page organization would have deflected attention from the later pages offering the more important trigger replacements. Many readers would have dis-engaged before seeing the trigger repair offer pages. This would accrue towards decreasing the Class member’s interest in participating in the settlement. In my experience, organizing these pages this way is a way of distracting readers and lessening response.

Note: The claim form or notice make no mention of the fact that the model 600 recall and repair is still ongoing at Remington’s website.[35] *This is a lost opportunity to communicate that ongoing recall and make more guns safer. Also, it is worth noting that ANYONE who submits an invalid serial number at Remington’s own recall pages is immediately offered a 20% discount on purchases.*

[35] https://www.remington.com/support/safety-center/safety-modification-program/remington-model-600-660, last visited July 28, 2016.

h. The "warning" about accidental discharges that is provided on claim form pages 7, 10, 13, and 14 alerting Class member to STOP using their weapons, should have been provided prominently in the notices themselves:

   i. If this warning had been prominent in the notices, claims would have been much higher, and Class members much safer, in my opinion.

   ii. Instead, being "buried" inside the claim form in the way it is, it appears as though the warning is more of a tool for future litigation purposes in the event a gun is not returned, and later discharges unintentionally.

   iii. The positioning of this warning in the claim form, associated with "yes, I have experienced an accidental discharge" communicates that potential danger exists only as to a gun that has already exhibited an accidental discharge. This serves to lessen concerns among others, and would have accrued to a lower claims rate not a higher one.

STATEMENTS AND OMISSIONS

6. Important and available information should be provided to the Court.

   a. Statistics from the internet banner portion of the notice program that were presumed to reach the owners of nearly 2 million guns, including:[36]

      i. The target audience used for combining the reach of the magazines with reach of the internet banners.

      ii. Support for the calculations utilized to make the overall reach calculation.

      iii. The reach calculation ascribed to the internet banner campaign.

      iv. Where the internet banner impressions appeared by network, and by website URL.

      v. How many different human beings clicked the internet banners and then clicked to open a notice at the settlement website.

      vi. All of the Facebook metrics including clicks from Facebook to the website and ensuing clicks to notice pages.

[36] The magazines reached 48% of Class members (7.5 million guns x 48% = 3,600,000 guns) as shown by 2015 GfK MRI data. The vendor opined that the magazines and internet banners together reached 73.7% of Class members (owners of 5,527,500 guns). Therefore, the notice vendor believes that the owners of 1,927,000 guns were reached with notice through internet banners. However, the click data from banner to notice which the vendor would possess would likely refute this—click rates are routinely small fractions of a percent.

b. Information about the magazine portion of the notice program including:

   i. Tearsheets showing whether and how the notices actually appeared in print.

   ii. The reach calculation ascribed to the magazine campaign.

   iii. Confirmation that the full circulation of each publication was purchased.

c. Other important and readily available information:

   i. How many mailings were returned as undeliverable and the treatment of those mailings.

   ii. Which websites, print, and broadcast media ran news stories and on what dates.

   iii. All settlement website traffic statistics including unique visitors on a page by page basis, along with time spent and including the number of total and unique page views for the notices and claim forms.

7. Notices and Plan aspects were apparently not court-approved or disclosed. The FJC Checklist advises that all notices seek court-approved prior to issuance. The settlement agreement states that "notices would be submitted for court approval." These key items were not in Court filings before the notices were issued as far as I can see:

   a. The internet banner—what it would look like, or what it would say. Did the banner meet the content requirements of Rule 23?

   b. The original Facebook posting—what it would look like, or what it would say. Did its content satisfy Rule 23?

   c. The joint press release.

   d. The magazine notice shown to the Court for approval was not the actual size it appeared in publications. It was shown as an 8 ½ x 11 page, but was published as a fractional page, rendering it less noticeable. *See* **Exhibit 4**, ECF No. 86-4, April 8, 2015, compared to the notice as it appeared in Parade.

   e. The mailed notice format was not shown as it would appear on the front and back for the Court to test whether it was likely to be noticed and read. We do not know how it was addressed and what the callouts were if any to ensure readership. The FJC models show outside envelopes designed to overcome "junk mail" appearance and gain readership at www.fjc.gov.

8. The vendor stated that the appearances in the press release "*appeared on 225 websites and reached a potential audience of 21,972,000 persons*."[37] This is misleading because the total audiences of all of the pages of the websites overstates the number of people who viewed the page that contained the press release on each site. This is like putting a needle in a haystack and stating that all of people who walked by the haystack "potentially" saw the needle.

NOTICE FAILED FJC CHECKLIST AND NORMS FOR IMPORTANT NOTICE PROGRAMS

9. The vendor indicated that the original effort satisfied the FJC Notice Checklist,[38] but it did not.

10. The FJC Checklist has four (4) major points:

    a. **Reach** – The FJC wrote: "***Will notice effectively reach the class?***" The FJC cited in the Checklist a study reporting that median reach of Court approved plans was 87%. Most high-stakes notice efforts in the FJC study cases achieved upwards of 95%—truly and conservatively—or higher. An inflated 73% plan that actually reached slightly more than 49%—leaving half the class unaware—for a case of this import, woefully fails the FJC guidance. The FJC Checklist states:

        > *"The lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%. A study of recent published decisions showed that the median reach calculation on approved notice plans was 87%."*

    As the notice expert who collaborated with the FJC on the Checklist and the study, in my opinion the FJC Checklist is not stating that the low end of 70% is a high reach. Instead, the median of 87% is critically important. And the most high-stakes cases in the FJC study reached close to 95% or more of Class members.

    b. **Design** – The FJC wrote: "***Will the notices come to the attention of the class?***" The *Pollard* notices did not have an attention-getting headline which would have dramatically reduced the noticeability, readership, and thus response.

    c. **Content** – The FJC wrote: "***Are the notices informative and easy to understand?***" The *Pollard* internet banners, revealed to be small,[39] could not have contained Rule 23 compliant content, meaning only those that click them and then click the notice would have seen a notice. The internet banner design and content was not provided as far as I

[37] Declaration of Steven Weisbrot on Implementation and Adequacy of Notice Plan, ECF No. 92-9, Sept. 4, 2015.

[38] www.fjc.gov, click on the class action notices item.

[39] The notice vendor listed the pixel sizes: *"...standard IAB sizes (160x160, 300x250, 728x90)*" Note: a pixel is 1/75th of an inch on a typical computer screen. Declaration of Steven Weisbrot on Implementation and Adequacy of Notice Plan, ECF No. 127-2, June 10, 2016.

can find in the public record, nor have the typical click-rate statistics. Additionally, the print notices did not focus on the trigger problem enough to compel action.

d. **Convenience** – The FJC wrote: "***Are all of the rights and options easy to act upon?*** The Claims process was akin to gun registration and unnecessarily complex; a known hurdle that would deter claims. The claim form was clumsy and confusing.

e. The FJC Checklist warns about over-reliance on internet banners. It specifically warned that claims would be very low as a result. The FJC Checklist states:

> *"Inflated audience data via Internet ads is common. It is very expensive to reach a significant percentage of a mass audience with Internet banner ads. Watch for suggestions that Internet ads and social network usage can replace all other methods. Reach, awareness, and claims will likely be very low when such a program is complete."*

f. There was no report on the budget spent to advertise, no documents from the actual websites showing where the impressions appeared or indeed whether they appeared; none of the data that determines actual effectiveness. The FJC warned against data that simply sounds impressive:

> *"Is any Internet advertising being measured properly? Audiences of Internet websites are measured by "impressions." Total, or "gross," impressions of the entire website do not reveal how many people will view the notice "ad" appearing periodically on a particular page."*

g. The FJC Checklist warns about overlooking meaningful individual mailed notice:

> "*Look closely at assertions that mailings are not feasible*."
>
> *"If individual notice will not be used to reach everyone, be careful to obtain a first-hand detailed report explaining why not."*

There was no such report. Apparently there are now more names and addresses but lists held by others that could be tapped and should be investigated. Physical mailings yield the greatest response—by far.

h. The FJC Checklist explains how to design notices to garner attention and compel action. The original notices clearly fail to stand out or contain any meaningful call to action appropriate for this case. *See* www.fjc.gov (click the "class action notices" item, and then by way of example, click on "for homeowners").

i. The FJC Checklist calls for notices to have attention-getting headlines. The *Pollard* notices as published did not. The FJC Checklist states:

> *"It is important to capture attention with a prominent headline (like a newspaper article does). This signals who should read the notice and why it is important. The overall layout of the notice will dictate whether*

busy class members will take time to read the notice and learn of their rights."

j. The FJC Checklist guidance on "reach" was not satisfied:

> *"Consider the breakdown of known and unknown class members, the age of any mailing lists, and the parties' willingness to spend necessary funds to fully reach the class."*
>
> *"Is the notice plan conducive to reaching the demographics of the class?"*
>
> *"Are the reach calculations based on accepted methodology? An affiant's qualifications are important here. Reach calculation methodology is commonly practiced in advertising and media-planning disciplines. Claims administrators are often accountants by training and may lack personal knowledge or the training to conduct reach analyses."*

We have seen that the target audience was narrow and mixed improperly to inflate the overall reach. The methodology used was not accepted. The affiant is a lawyer. In truth, it will most likely take more money than expected to achieve adequate notice and do this job properly.

11. Information from experience in major notice cases may help the Court. For example, comparing the notice here to one other high profile class action:

a. In the *In re Holocaust Victims' Assets Litigation (Swiss Banks)*, notice needed to find Survivors of past atrocities. A team of notice professionals designed notices with large headlines and callouts. *Pollard's* notices to Class members at current risk of injury and death, according to the complaint, had no large headlines.

b. *Swiss Banks* notice reached more than 95% of its Class members 5 times each or more via mailings, publications, television, radio, internet, press outreach, and organizational outreach *Pollard* left about half the Class uninformed after magazine and internet banner ads.

c. *Swiss Banks* notice used millions of individual notices to reach hundreds of thousands of survivors and heirs. As many lists as could be obtained from sources were captured and scrubbed. *Pollard* sent notice to 2,400 people who already had trigger repairs, not to warranty databases, and not to lists of millions of gun owners that third parties hold.

d. *Swiss Banks* notice used multiple press conferences and Class Counsel fielded as many press calls as possible to achieve accurate and neutral but highly read and viewed compelling news stories. *Pollard* notice included a press release that was not focused on the trigger problem and repair and the lawyers did not comment for reporters.

e. *Swiss Banks* notice used teams of outreach coordinators to explain and provide notices for third party organizations to send and hand out to their members who may be class members. Those stakeholder groups encouraged participation and facilitated claims filing. *Pollard* did not leverage dealers except to send posters that together with magazine ads received 102 responses.

f. The *Swiss Banks* court received four highly detailed reports together with my analysis of the overall effectiveness of notice, notice that generated 270,000 forms before final approval which was prior to another notice program and years away from claims deadlines, among a class of some 600,000 elderly Survivors alive at that time.

g. I recommend to the Court, by way of example, AMENDED REPORT OF NOTICE ADMINISTRATOR TODD B. HILSEE ON ANALYSIS OF OVERALL EFFECTIVENESS OF NOTICE PLAN*, In re Holocaust Victims Assets Litigation*, ECF No. 355, Cv-96-04849, E.D.N.Y.

How Could This Happen? Why Does Nobody Come Forward?

Notice vendors today purchase advertising for about the same prices. When settling parties solicit "bids," as they now do, they ask not only for a price to execute an independently determined effective level of notice; instead, they ask vendors to propose a notice plan they will sign an affidavit in support of, and what will it cost. The process thus becomes a "reverse auction" that awards notice contracts to vendors willing to provide the least notice but still swear it to be the "best practicable."

To compete, low bidders are providing erroneous calculations that overpromise effectiveness, thus appearing to achieve more, for less. The experienced notice professionals who still stand for effective notice campaigns have been silenced by threats—implicit or explicit—by leading law firms, not to oppose the low bidders or their methods, even after being informed that the calculations are wrong. The inflated conclusions are presented to courts nonetheless. The threat is one of being "blackballed" in the industry, *i.e.,* firms will not award them contracts and they will tell other firms not to award them contracts if they appear in opposition at all, let alone for an objector. Good law firms have fallen prey to falsely-effective inexpensive notice promises, and they must fear that criticism will compromise the assurances they have proffered, or will proffer, to other courts in other cases.

But why would this happen? There is a lack of incentive for truly good notice among class action settling parties, a lack of adversarial notice practice, and often a mutual aversion or nonchalance towards effective notice. For example: defense counsel bargain for low response to save its client money (claims-made); Class Counsel worry defendant will not settle; Class Counsel doesn't want objections to fees; both seek to avoid reduced *pro rata* payouts from too many claims that might suggest an insufficient settlement (fixed fund); Class Counsel fees are not usually tied to actual claims rates; defendant fears bad publicity; Class Counsel fears high cost when certified without settlement and must pay notice cost; both do not want opt outs, *etc*. None of these interests help class members, or Courts who want to fairly allocate benefits to as many of the class members as it can, before binding them all by their silence, or worse, by their unawareness.

New vendors seeking market share have sold the idea that electronic, or "digital" means like internet banner ads can result in notice that "reaches" (exposes, *i.e*., provides an opportunity to come to the attention of) class members for far less money than other methods like physical mailings. The problems with the last sentence are a) the "for far less money" part is false,[40] and b) data shows individual direct physical mailings to be far more responsive as discussed in this report. Because they provide affiants who are not trained in advertising media calculations, and because no firm will subject them to a *Daubert v. Kumho* expert challenge, and because they have no history of testimony based on accurate high reach calculations to live up to, the vendors promise inflated levels of anticipated success that they purport to result from modest, inexpensive, and fleeting internet banner ad-reliant programs. As such, the percentages of classes that such plans purport to reach is often grossly overstated, with often more than half of a class being bound without ever having seen a notice, and as a result, very small percentages of classes recovering benefits:

1. In 2014, a Florida court was concerned about low response and the vendor stated that a 0.023% claims rate was typcial for their cases with little or no individual notice.[41]
2. Forbes Magazine gleefully reported on that case, which involved refunds on Duracell batteries, *"The probability of getting a straight flush in a 7-card poker hand is slightly higher at 0.0279%."*[42]
3. Unless courts seek answers like this Court did in December, and correct the problems, notice proposals will lead to continued degradation. Last month, a California appellate decision denied approval to a settlement where out of 500,000 members, 895 claims were filed, less than two-tenths of 1 percent (0.179%) for a refund of an obesity product. Among other notice mistakes, the decision reveals that 237,000 physical mailing addresses of Class members were known. Instead, an email was sent and the Class ignored it or it went to SPAM filters.[43] Apparently in that case one could have simply sent checks to all 237,000, or, as the Court of appeals observed, investigated a subpoena process for additional mailing addresses.

These practices have created the danger that opt-out class actions will be de-legitimized. To help minimal notice campaigns to be approved, some new vendors have been denigrating "reach" and "frequency," despite deeply established advertising industry measurement methodology critical for an objective assessment of the effectiveness of a mass communications program. *Out of the total universe of class members, what percentage will be exposed to a notice?* That is basic advertising science, entirely answerable in every case, that courts deserve to know. Walking away from this because it now costs more than parties want to spend, will destroy not only the breadth and fairness of exposure that due process notice requires, but will continue to decimate response and participation in class actions, which this case has unfortunately become the latest poster child for.

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[40] The Rising Cost of Consumer Attention: Why You Should Care, and What You Can Do about It, Thales S. Teixeira, HARVARD BUSINESS REVIEW, working paper 14-055, Jan. 17, 2014. "*The cost of gaining attention has increased dramatically (seven- to nine-fold) in the last two decades*."

[41] Declaration of Deborah McComb re Settlement Claims, *Poertner v. Gillette*, M.D. Fla., Case No. 12-00803, ECF No. 156, April 22, 2014. Note: This marked one of the first times that a claims administrator publicly acknowledged the trove of class action response data they keep private and do not disclose in low-bid proposals.

[42] Forbes Magazine, ODDS OF A PAYOFF IN CONSUMER CLASS ACTION? LESS THAN A STRAIGHT FLUSH, May 8, 2014. http://www.forbes.com/sites/danielfisher/2014/05/08/odds-of-a-payoff-in-consumer-class-action-less-than-a-straight-flush/#1d27ea45144f, last visited July 29, 2016.

[43] *Duran v. Obesity Research Institute*, D067917, COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE, STATE OF CALIFORNIA, June 23, 2016, on appeal from San Diego County Superior Court. Note: Remington defense counsel Shook, Hardy and Bacon are listed as representing defendant Wal-Mart in that case.

Now, those who know better dare not speak up. That is why I speak up as someone who does not bid and does not compete to execute notice. Someone who lawyers and courts have trusted to be honest and straight forward. The low-ball notice plans and plummeting response rates are causing ridicule to courts and the class action device, studies calling class actions ineffectual, empowering legislation to eviscerate class actions, and now class action notice rule proposals that would weaken the one bulwark requirement—individual notice by mail—that generates the greatest response.

Most response data is privately held in claims administrators' case vaults—administrators who have been appointed by Courts, but compelled to keep information private by settlement appointments. Counsel often do not make the information public unless compelled by a Court. One might look at all this cynically if a class loses out on a refund on batteries, but here we have a case where lives may be at risk, and so this is evidence of the harm these notice practices will cause.

When notice truly is effective, and reach is not inflated, and a claims process is not a hindrance, it can be said that response does not dictate notice adequacy, but when notice and claims process weakness and defects are present, low response *is* an indicator of notice inadequacy, and the latter is the case here.

Will the New Media Proposal Cure the Problems?

The campaign presumes that the first notice was sufficient to let Class members exercise their other due process rights. Given the reach and notice defects that were not reported to the Court as revealed above, that cannot be so. The notices would need to be revised to communicate all rights class members have before final approval.

The campaign targets a smaller group of younger, social-media using individuals who may or may not be Class members without an apparent concern for overall reach or the broadest possible coverage. That is suitable for a political campaign where only 41% of citizens vote, but not the requirements of notice.

Also, the proposal suggests that what worked for Pres. Obama will work here. But, the Obama media budget was $483 million dollars, including a massive television campaign as shown below.

The notices are "feel good" messages that would give Class members get a comfort level that Remington cares about their safety, rather than delivering notice in the most compelling way that will cause them to take advantage of the trigger replacement, owing to the danger that the Class Counsel believe they currently face under their operative complaint.

The public testing of notices in public was done without Court-approval it would seem, and none of the messages tested included any direct and compelling messages focused on the potential for guns firing without triggers being pulled.

The proposal does not cure the prior problems. The supporting papers are not transparent:

1. The program will fail to reach a high percentage of Class members.

   a. Only 52.8% of rifle owners even use Facebook.[44] This means that even if enough advertising was purchased to dominate Facebook, *i.e.,* with banners everywhere on Facebook, the program would at best reach about half the Class. No budget is provided, but the great likelihood is that a very low reach will be achieved.

   b. There is no budget for the intended use of Facebook. The metrics provided are fuzzy, and information provided does not confirm whether the impressions are unique, viewable, and that the reach is a proper net reach, and whether those in the test who clicked were humans or if they then opened a notice.

   c. The suggestion that notice will be directed to "*the total universe of Facebook users in the United States who were identified pursuant to our hunter-sportsman audience model, overlaying individuals who expressed a self-identified interest in topics relating to hunting and Remington Arms on social media*" calling these 3.4 million people "*putative class members*" is conclusory, speculative, and is an improper media targeting method. One cannot know whether within this group of Facebook users are any significant percentage of Class members, or whether they own Remington rifles.

   d. The radio notice plan is deficient:

      i. The stations on which spots would appear are not identified.

      ii. The ratings and rankings of the stations to be used are not identified.

      iii. The specific markets where the spots will appear are not identified. The new vendor discusses a focus on "key states" without any study of rifle ownership to verify a scientific basis for such a focus.

      iv. The specific mix of dayparts in which the spots would appear are not identified.

      v. The new vendor mentions only "impressions," when major market radio station advertising is purchased by rating points.[45] The anticipated reach should be accurately calculated before approval to proceed and reported to the Court.

      vi. There is no information provided on the reach of this entire effort. This is important because radio is a tool to build frequency not reach.

   e. The I-Heart internet streaming radio will not reach high percentages of Class members: **Only 6.3% of rifle owners use internet radio based on GfK MRI data.**

[44] 2014 Gfk MRI.

[45] A rating point represents one percent of a target population.

f. The proposed script for the radio starts with "Reminder to Remington Rifle Owners." This distracts listeners from the urgency of the problem. Then, repetitive references to Remington's safety insistence undermines the goal of increasing claims. Highlighting an urgency to act and repair would not compromise Remington's denial of liability. Those arguments should not undercut response by being a center piece of public notices.

g. The proposed internet banner designs give too much emphasis on "image" for Remington:

   i. None of the social media ads tested headline the problem and solution. They each dedicate the most prominent visual element to outdoor or generic gun/hunting imagery, and the headlines are non-specific—the type a reader would expect from a general safety public service announcement.

   ii. Both social media ads ("*Learn more. Remington Owners Know: Safety First*" and "*How well do you know your rifle?*") are slogans that suggest that owners being responsible can obviate safety concerns. These designs will help any Remington PR concerns, but will dampen response.

   iii. Even if a fleeting banner campaign is appropriate, how was "**Your Remington rifle may fire without pulling the trigger. Get it repaired now**" not one of the options tested?

   iv. Testing is not a bad idea. However, the Court should have been afforded the opportunity to approve which messages would be tested publicly so as to avoid potentially confusing Class members pursuant to later approved notices.

2. The metrics about the results of the Facebook test do not inform the reach or the anticipated responsiveness among Class members:

   a. The "reach" figure quoted is misleading. Reach is a net percentage of a target audience but the number listed is not Class members. It is admitted to be greater than the total universe of a 150,000 test "group," by it being shared outside the target group.

   b. The clicks merely show that out of the 1 million+ impressions only 18,000 clicked, and we are not told how many of those clicks were different individuals, not accidental clicks and not robots, *and,* how many humans then clicked to open and read an actual notice.

   c. The big story now for Facebook advertisers is that robots are generating clicks not humans.[46]

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[46] *See Forbes Magazine*, Why Do Some Advertisers Believe That 90% Of Facebook Ad Clicks Are From Bots?, July 31, 2012. http://www.forbes.com/sites/ericjackson/2012/07/31/why-do-some-advertisers-believe-that-90-of-

3. The proposed electronic campaign simply cannot do for the Court what the new vendor apparently effectively did for Pres. Obama. The proposal does not reveal the budget for the advertising to be purchased in *Pollard* in order to compare with the fact that President Obama spent $422 million on media in 2008 according to Federal Election Commission data[47]:

    OBAMA 2008 Media Spending:
    Unspecified media buys $352,314,593[48]
    Web ads $21,087,908
    Print ads $20,619,814
    Miscellaneous media $17,006,627
    Media production $10,845,556
    Media consulting $294,907
    Broadcast ads $16,910

    a. In 2012 the Obama campaign spent even more, $483 million, on media.[49]

    b. If the plan was to spend $483 million (in today's dollars) on a pervasive television, print and internet advertising campaign as Pres. Obama did, I would revise my thinking. However, surely the budget will be a small fraction of that amount, thus resulting in the proverbial needle in the internet haystack as compared to Mr. Obama's media dominance.

4. The postcard mailing is defective in that it highlights a legal basis in the class action to characterize it in the headline as an "economic loss lawsuit" which muddies the message and weakens the headline. In my experience, this type of language reduces the attention paid and reduces response. This is inappropriate for notices that must be response-oriented using the main reason for the Class to care and respond. A better headline is: **Your Remington rifle may fire without the trigger being pulled. Read about a free repair available from a class action settlement.**

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facebook-ad-clicks-are-from-bots/#a18d8cf37d9c, last visited July 28, 2016; *See also*, Did we get duped by Facebook click fraud?, *Diginomica*, August 24, 2014.

[47]https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0ahUKEwiq3ZzdtIXOAhVENz4KHSpVBmkQFggjMAE&url=http%3A%2F%2Fwww.opensecrets.org%2Fpres08%2Fexpend.php%3Fcid%3Dn00009638%26cycle%3D2008&usg=AFQjCNGWCV996VRk3zbh5BU2ICKjm44aAw, last visited July 21, 2016.

[48] The New York Times reported that in 2008, $2.6 billion was spent by both candidates and their interest groups on advertising, with $2 billion going to local broadcast television. http://thecaucus.blogs.nytimes.com/2008/12/02/about-26-billion-spent-on-political-ads-in-2008/?_r=0, last visited July 28, 2016.

[49]https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiq3ZzdtIXOAhVENz4KHSpVBmkQFggcMAA&url=https%3A%2F%2Fwww.opensecrets.org%2Fpres12%2Fexpend.php%3Fid%3DN00009638&usg=AFQjCNHbvoDx5TDohGp-FvNM_2WKYGdgIA, last visited July 21, 2016.

5. Not sending a claim form along with the mailing will directly lead to lower response. Convenience builds claims rates.
6. The suggested individual mailing plan a) fails to indicate the source of the newly located 1,093,000 contacts held by Remington b) fails to indicate why they weren't available before, c) fails to indicate whether physical addresses are available for contacts they are choosing to send emails to (because physical mailings with claim forms will garner greater response), and d) fails to investigate mailings that could be pursued to millions of names and addresses of gun owners who's contact records are available in public records or records held by third parties.
7. The fact is that 92.3% of rifle owners view television,[50] the highest coverage of rifle owners of any media type. Social media, Facebook and internet radio audiences provide the least coverage of rifle owners.[51] Television has the power to demonstrate the trigger problem, and rifle owners and hunters are above average TV consumers. The audience is broader and more mainstream and less high-income than the current notice proposal presumes.
8. The notice plan makes no reference to any changes in the claims process that certainly played a large part in the depressed response.

Conclusion

The original campaign was held out to be effective, but key information could have guided the Court towards a notice effort suited for this case. The new proposal is unsuited for class action notice, may get response among a narrow audience, but it will reach as few Class members as the first campaign did. I'm afraid the Court and Class will get stung.

I do not know what the budgets for these notice programs were or are. If the parties are prepared to spend millions of dollars to properly maximize individual mailed notice, utilize broad-reaching national media like television, and heavier and more attention-getting print media including newspapers to reach the traditional older segments of the real target audience,[52] and also a) revamp or do away with the claims process to avoid known registration aversions, and b) ensure direct, compelling, problem-oriented messaging, then response can and should be dramatically improved. This would help Class members avoid the dangers that Class Counsel have alleged, and which too many fathers and mothers have suffered through already.

To avoid the real notice industry problems that I have identified, which have propelled a race to the bottom in class notice effectiveness and as a result the ever-lower claims rates such as here, I would suggest the Court solicit sealed notice proposals directly from notice professionals trained in mass media for class actions and deeply experienced in the most important cases. The parameters should

[50] 2013 GfK MRI

[51] Only 61.4% of rifle owners use any social media network, while only 47.9% use Facebook, and 6.3% use internet radio, according to 2013 GfK MRI data.

[52] The notice budget in *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, was more than $20 million.

include that notice reach 95% of Class members, exploit individual notice including research and investigation into non-party cooperation if feasible, and utilize media that are most used by the broadest Class demographic including television. I would choose the best proposal not the cheapest.

I would also suggest a simpler claims process that avoids registration-like submissions and somehow allows local dealers to be involved.

Sincerely,

Todd B. Hilsee
Principal

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EXHIBIT 1

Limited Two-Year Firearm Warranty

Who and what is covered by this warranty and for how long? Remington warrants to you, the original purchaser of a new firearm that, for two years from the date of purchase in the United States or Canada, your Remington firearm will be free from defects in material and workmanship.

What will Remington do if you discover a defect? If you make a claim within the warranty period following the instructions given in this warranty, we will, at our option, repair the defect(s), or replace the firearm at no cost to you. If we send you a new firearm, we will keep the defective one.

What must you do to make a claim under this warranty? First, when you purchase your firearm, you must complete and mail the warranty registration card to us (keep your sales receipt for proof of purchase date). Then, if you discover a defect, you must notify us or an authorized Remington warranty repair center before the end of the two-year period. You may either call or write Remington at:

Remington Arms Company, Inc.
Consumer Service Department
Post Office Box 700
Madison, NC 27025
1-800-243-9700

PLEASE DO NOT RETURN FIREARMS TO THE ABOVE ADDRESS. If we decide that it is necessary for you to return the firearm to the factory or an authorized warranty repair center, the owner must prepay freight. We will not accept COD shipments.

What is not covered by this warranty?
We will not cover damage of your firearm caused by:

- Failure to provide proper care and maintenance
- Accidents, abuse, or misuse
- Barrel obstruction
- Hand loaded, reloaded or improper ammunition
- Unauthorized adjustments, repairs or modifications
- Normal wear and tear

What is excluded from this warranty? Remington excludes and will not pay incidental or consequential damages under this warranty. By this we mean any loss, expense or damages other than to repair the defects in the firearm or replace the firearm. No implied warranties extend beyond the term of this written warranty. *PLEASE NOTE:* Some jurisdictions do not allow exclusion of incidental or consequential damages, or limitation on how long an implied warranty lasts, so the above exclusion and limitations may not apply to you. This warranty gives you specific legal rights and you may also have other rights.

PLEASE DETACH THIS PANEL BEFORE MAILING.

2684470933

Remington

Tell Us About Yourself

First Name ☐ **I.** ☐ **Last Name** ☐

Address (street number) ☐ **(Street name)** ☐ **Apartment Number** ☐

City ☐ **State** ☐ **Zip Code** ☐ **Phone Number** ☐ - ☐ - ☐

Email Address (Example: yourname@yourhost.com) ☐

Date of Birth: ☐ / ☐ / ☐ (Month / Day / Year) **Your Gender:** ☐ Male ☐ Female

What is your passion? Select all that apply.
☐ Big Game ☐ Small Game ☐ Waterfowl ☐ Upland ☐ Turkey ☐ Predator/Varmint ☐ Range & Recreation ☐ Tactical

How likely are you to recommend Remington firearms to friends or family?
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10
Not At All Likely (0) —— Extremely Likely (10)

☐ **Yes! I want to receive offers or communications that may interest me from other companies via e-mail, I understand this e-mail address may be shared with and/or combined with information from other sources**

☐ **Yes! I want to receive offers or communications from Remington via e-mail**

Tell Us About Your Purchase

Serial Number ☐ **Date of Purchase** ☐ / ☐ / ☐ (Month / Day / Year) **Purchase Price** $ ☐ , ☐ . 0 0

Product Name/ Model ______

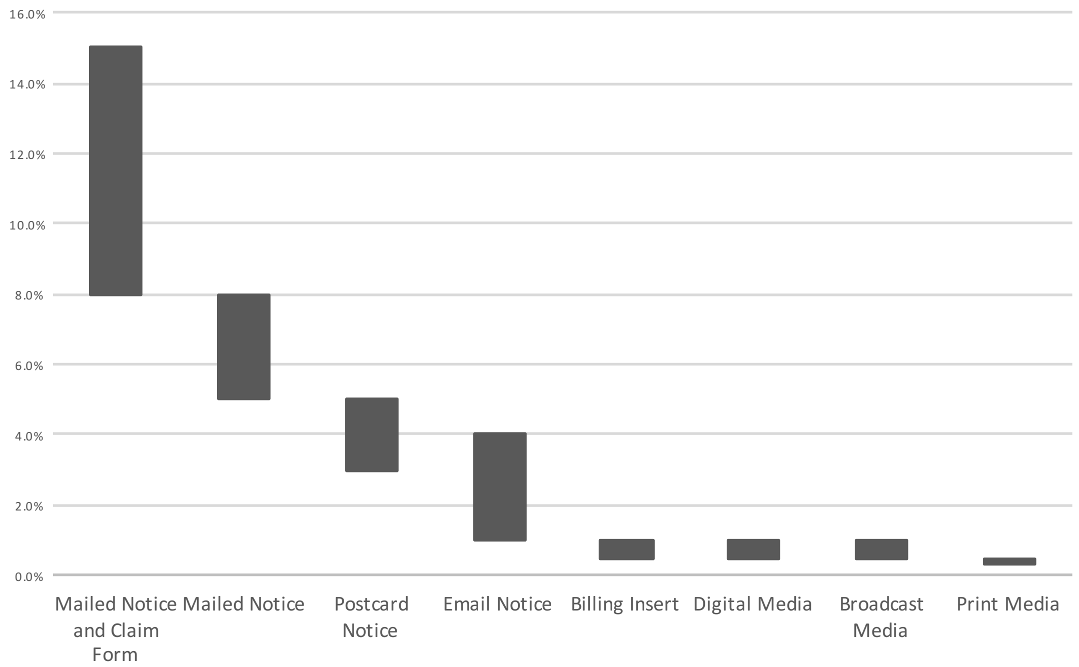
How many other Remington Firearms do you own? ☐ None ☐ 1-2 ☐ 3-4 ☐ More

Thank You! We appreciate your responses to this questionnaire. The information you choose to share with us will be used by us and our marketing partners to offer you product information and other communications that may interest you. If you prefer not be contacted about these special offers(direct mail), please check here:
PLEASE FOLD AND SEAL WITH TAPE BEFORE MAILING. DO NOT STAPLE

EXHIBIT 2

Participation Rates and Types of Notice

Everything Else Being Equal…


16.0%
14.0%
12.0%
10.0%
8.0%
6.0%
4.0%
2.0%
0.0%
Mailed Notice and Claim Form
Mailed Notice
Postcard Notice
Email Notice
Billing Insert
Digital Media
Broadcast Media
Print Media

Key Takeaways

Participation Rates are Generalizations

Known Class Members: Direct Notice With a Claim Form is more expensive than the alternatives, but generally has higher class member participation.

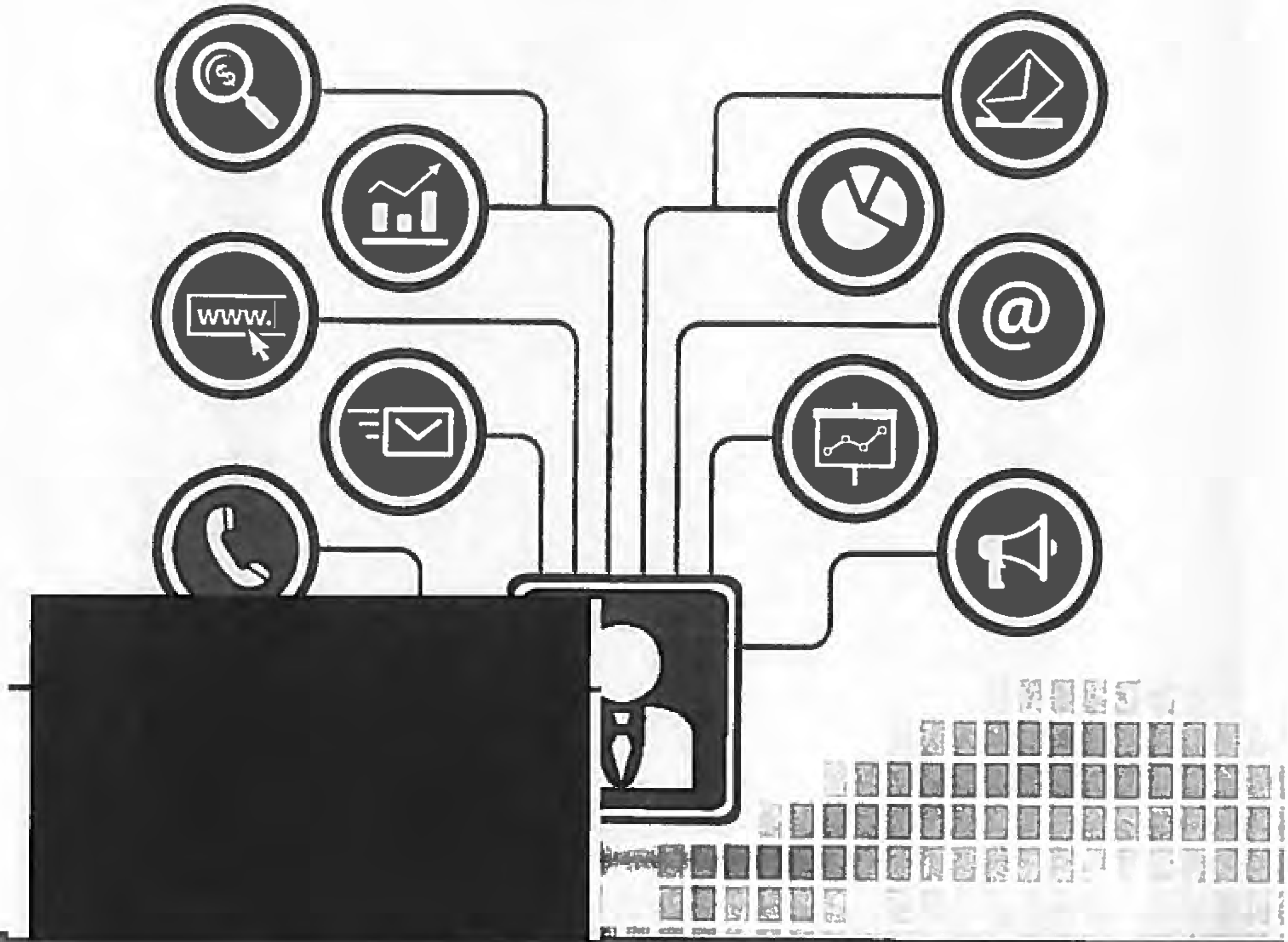
Presented to Federal Trade Commission, March 2016

Prepared by Analytics LLC

EXHIBIT 3

DMA RESPONSE RATE REPORT

2015



[redacted]

DATA TO BENCHMARK
All of Your Marketing Campaigns

DMA

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About DMA

The Direct Marketing Association (www.thedma.org) is the world's largest trade association dedicated to advancing and protecting responsible data-driven marketing. Founded in 1917, DMA represents thousands of companies and nonprofit organizations that use and support data-driven marketing practices and techniques. DMA provides the Voice to shape policy and public opinion, the Connections to grow members' businesses and the Tools to ensure full compliance with ethical and best practices as well as professional development.

ISBN information: 978-0-9833791-7-1

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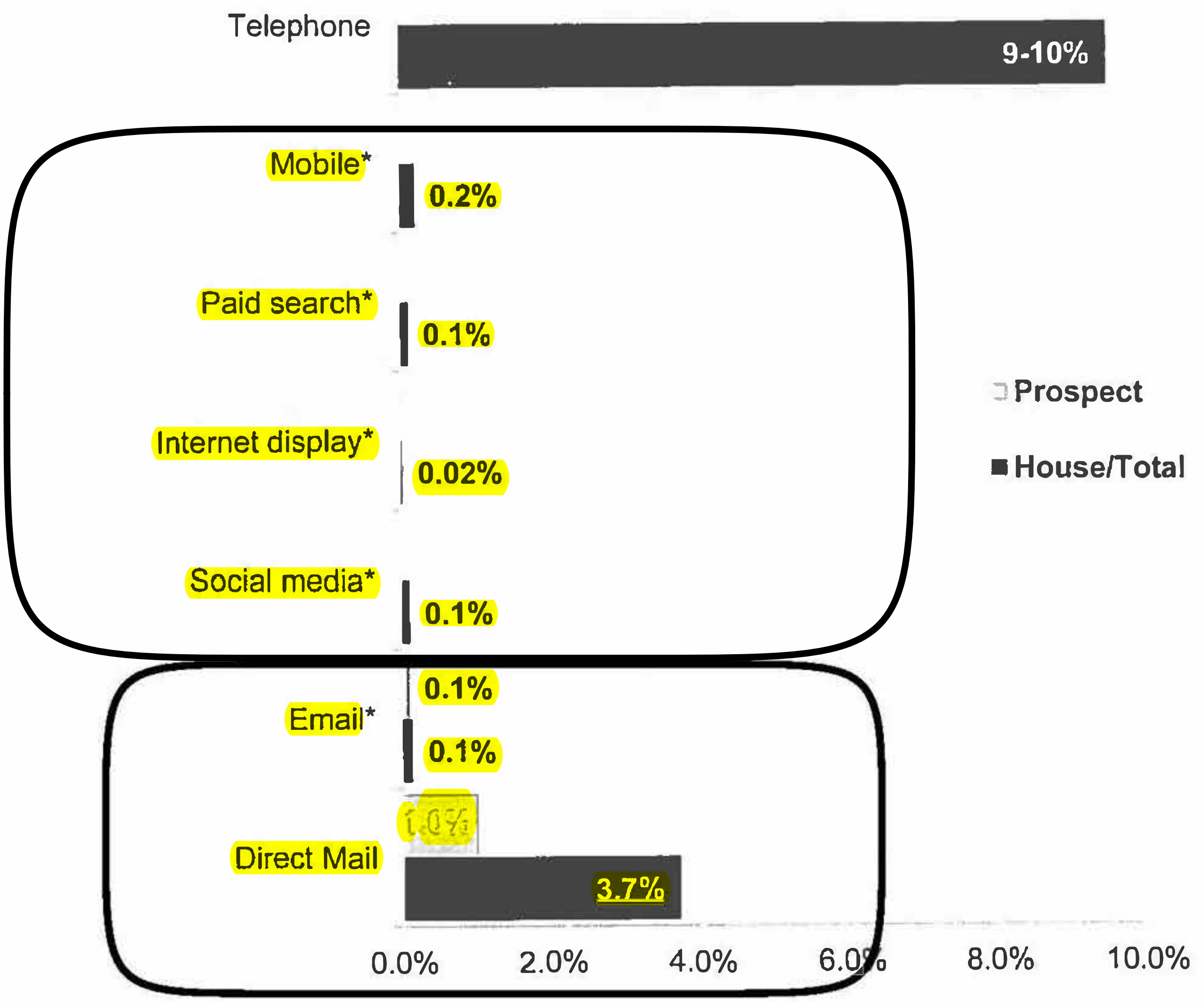
Figure 3: Response by Selected Media


Telephone
9-10%
Mobile*
0.2%
Paid search*
0.1%
Internet display*
0.02%
Social media*
0.1%
Email*
0.1%
0.1%
Direct Mail
1.0%
3.7%
0.0%
2.0%
4.0%
6.0%
8.0%
10.0%
Prospect
House/Total

2015 Response Rate Benchmark Study, DMA & Demand Metric, March 2015

Note: Response rate for telephone was graphed using the midpoint of the range.

**CTR x Conversion rate*

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Chapter 3: Email

Chapter Highlights

- **Open rates ranged from a low of 7-8% * for emails sent to prospect lists to drive traffic. Ironically, emails sent to house lists to drive traffic enjoyed the highest open rate at 23-24%.**
- **Click rates were lowest for lead generation emails sent to prospect lists (3-4%)** and highest for B-to-B emails sent to house lists (17-18%).
- **Conversion rates were lowest for B-to-C, B-to-B and lead gen emails sent to prospect lists (1-1.9%)** and highest for email campaigns to drive traffic sent to house lists (4-4.9%).
- **For 36% of respondents, the primary purpose of emails sent to house lists was to make a direct sale.** For emails sent to prospect lists, 62% say the main purpose was lead generation.
- **Email usage for marketing campaigns equals or exceeds 80% for most industries.** Email usage is lower for Consumer Packaged Goods (63%), Education (70%), Financial Services/Insurance (75%), Healthcare/Pharmaceuticals (79%) and Travel/Hospitality (53%).

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EXHIBIT 4

LEGAL NOTICE OF SETTLEMENT

If you own certain Remington firearms, you may be eligible for benefits from a class action settlement.

A proposed nationwide Settlement has been preliminarily approved in a class action lawsuit involving certain Remington firearms. The class action lawsuit claims that trigger mechanisms with a component part known as a trigger connector are defectively designed and can result in accidental discharges without the trigger being pulled. The lawsuit further claims that from May 1, 2006 to April 9, 2014, the X-Mark Pro® trigger mechanism assembly process created the potential for the application of an excess amount of bonding agent, which could cause Model 700 or Seven bolt-action rifles containing such trigger mechanisms to discharge without a trigger pull under certain limited conditions. The lawsuit contends that the value and utility of these firearms have been diminished as a result of these alleged defects. Defendants deny any wrongdoing.

Who's included?

The Settlement provides benefits to:

(1) Current owners of Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms containing a Remington trigger mechanism that utilizes a trigger connector;

(2) Current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014 who did not participate in the voluntary X-Mark Pro product recall prior to April 14, 2015; and

(3) Current and former owners of Remington Model 700 and Model Seven rifles who replaced their rifle's original Walker trigger mechanism with an X-Mark Pro trigger mechanism.

What does the Settlement provide?

Settlement Class Members may be entitled to: (1) have their trigger mechanism retrofitted with a new X-Mark Pro or other connectorless trigger mechanism at no cost to the class members; (2) receive a voucher code for Remington products redeemable at Remington's online store; and/or (3) be refunded the money they spent to replace their Model 700 or Seven's original Walker trigger mechanism with an X-Mark Pro trigger mechanism.

How can I obtain benefits?

Submit a Claim Form. Claim Forms can be found at www.remingtonfirearmsclassaction settlement.com or by calling 1-800-876-5940.

What are my legal rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the Defendants yourself, you must exclude yourself from the Settlement Class by **October 5, 2015.** If you stay in the Settlement Class, you may object to the Settlement by **October 5, 2015.**

The Court will hold a hearing on **December 14, 2015,** to consider whether to approve the Settlement and a request for attorneys' fees of up to $12.5 million, plus a payment of $2,500 for each named Plaintiff. You or your own lawyer may appear at the hearing at your own expense.

For more information or a Claim Form:
1-800-876-5940 or www.remingtonfirearmsclassactionsettlement.com

; sparkle
be as *pétillant*,
which later made its
e Caribbean) takes
headiness usually
ider. Right now it's
pular cocktails as
d Dark 'n' Stormy.
r ale, this so-called
c and is typically
ale, it's not ginger
bonated water) is a
te awakener; with a
d perhaps a pour of
ituted for root beer
refreshing beverage
a authentic ginger
in liquor stores
easy to make at
ness and spice can
ur taste.

a Tea

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tury Japan (by way
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ed in hot
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smoothies;
s a matcha
oesn't stop
incorpo-
ktails
sing

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nd
g
ton's
man

g twist
beer classic.

Mimi's Ginger Beer

- ¼ lb fresh ginger, peeled and cut into small pieces
- 1 quart boiling water
- ½ cup floral honey
- 5-8 whole cloves
- 1 (1-inch) cinnamon stick
- ½ cup freshly squeezed lime or lemon juice

Grated zest of 1/2 lime or lemon
Ice, citrus fruit juice and/or dark rum (optional), for serving

1. Put ginger in a food processor, adding just enough cold water to puree it. Scrape pureed ginger into a large, heatproof glass or ceramic bowl or pitcher and add boiling water, honey, cloves, cinnamon stick, zest and juice. Cover loosely with a kitchen towel and keep mixture in a warm place for about 4 hours, skimming off the foam as it accumulates on the surface.

2. Stir in 1 quart cold water and taste for sweetness, adding more honey or lemon or lime juice as needed. Strain ginger beer and pour it into ceramic or glass bottles. Cap tightly and store in the refrigerator. Serve ginger beer as soon as it is chilled, or wait 2-3 days for it to ferment and start to fizz slightly. Dilute with ice, more cold water, citrus juice—or, for an extra jolt, dark rum. Chill, covered, for up to 1 week. Makes about 2 quarts.

There's ginger beer in my float!

LEGAL NOTICE OF SETTLEMENT

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A proposed nationwide Settlement has been preliminarily approved in a class action lawsuit involving certain Remington firearms. The class action lawsuit claims that trigger mechanisms with a component part known as a trigger connector are defectively designed and can result in accidental discharges without the trigger being pulled. The lawsuit further claims that from May 1, 2006 to April 9, 2014, the X-Mark Pro® trigger mechanism assembly process created the potential for the application of an excess amount of bonding agent, which could cause Model 700 or Seven bolt-action rifles containing such trigger mechanisms to discharge without a trigger pull under certain limited conditions. The lawsuit contends that the value and utility of these firearms have been diminished as a result of these alleged defects. Defendants deny any wrongdoing.

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(2) Current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014 who did not participate in the voluntary X-Mark Pro product recall prior to April 14, 2015; and

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For more Information or a Claim Form:
1-800-876-5940 or
www.remingtonfirearmsclassactionsettlement.com

EXHIBIT B

TODD B. HILSEE C.V

Summary

Todd Bruce Hilsee was the first person judicially recognized as an expert on class action notice in published decisions in the United States and in Canada, *See In re Domestic Air Transp. Litig.*, 141 F.R.D. 534, (N.D. Ga., 1992) and *Wilson v. Servier Canada, Inc.*, 49 C.P.C. (4th) 233, [2000] O.J. No. 3392), among many other judicial citations. Mr. Hilsee's ground-breaking work to establish today's notice standards included Holocaust victims' claims programs as well as international securities, asbestos, human rights, and hurricane victims' matters. Hilsee has been cited favorably more than any other notice expert, and has testified in court more often and more successfully than any other person in the field. Hilsee brought to courts the use of media audience data to quantify the "net reach" of class members, and brought "noticeable" notice designs as well.

Mr. Hilsee was the only notice expert invited to testify before the Advisory Committee on Civil Rules of the Judicial Conference of the United States regarding the 2003 plain language amendment to Federal Rule of Civil Procedure 23. He subsequently collaborated to write and design the illustrative "model" plain language notices for the Federal Judicial Center (FJC), including detailed notices, summary notices and envelopes, now at www.fjc.gov. He collaborated to create the FJC's "Notice and Claims Process Checklist and Guide" and contributed with attribution to the FJC's "Managing Class Action Litigation: A Pocket Guide for Judges."

Mr. Hilsee has authored and co-authored numerous articles on notice and due process, including law review and journal articles such as "*Do You Really Want Me to Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More Than Just Plain Language: A Desire to Actually Inform*," 18 Georgetown Journal of Legal Ethics 1359 (Fall 2005); and "*Hurricanes, Mobility and Due Process. The 'Desire to Inform' Requirement for Effective Class Notice is Highlighted by Katrina*," 80 Tulane Law Review 1771 (June 2006). Hilsee has lectured and/or been featured in educational DVD's and materials used during many judicial and bar association panels and symposiums, and at law schools including Harvard, Columbia, Temple, Cleveland-Marshall, and Tulane. He has lectured at the FJC's "District Judge Workshops," and served as an editor for the ABA's International Litigation committee.

As a communications professional, he served with Foote, Cone & Belding, the largest U.S. domestic advertising firm, where he was awarded the American Marketing Association's award for effectiveness. He received his B.S. in Marketing from the Pennsylvania State University. Todd can be reached at thilsee@hilseegroup.com.

Judicial Recognition

Judge Lee Rosenthal, *Advisory Committee on Civil Rules of the Judicial Conference of the United States* (Jan. 22, 2002), addressing Mr. Hilsee in a public hearing on proposed changes to Federal Rule of Civil Procedure 23:

> *I want to tell you how much we collectively appreciate your working with the Federal Judicial Center to improve the quality of the model notices that they're developing. That's a tremendous contribution and we appreciate that very much…You raised three points that are criteria for good noticing, and I was interested in your thoughts on how the rule itself that we've proposed could better support the creation of those or the insistence on those kinds of notices . . .*

Judge Barbara J. Rothstein, *Director, Federal Judicial Center,* (2010) Managing Class Action Litigation: A Pocket Guide for Judges. (Preface):

> *This pocket guide is designed to help federal judges manage the increased number of class action cases filed in or removed to federal courts as a result of the Class Action Fairness Act of 2005. . . This third edition includes an expanded treatment of the notice and claims processes. . . Todd Hilsee, a class action notices expert with The Hilsee Group, supplied pro bono assistance in improving the sections on notices and on claims processes.*

Judge Marvin Shoob, *In re Domestic Air Transp. Antitrust Litig.,* 141 F.R.D. 534, 548 (N.D. Ga. 1992):

> *The Court finds Mr. Hilsee's testimony to be credible. Mr. Hilsee's experience is in the advertising industry. It is his job to determine the best way to reach the most people. Mr. Hilsee answered all questions in a forthright and clear manner. Mr. Hilsee performed additional research prior to the evidentiary hearing in response to certain questions that were put to him by defendants at his deposition . . . The Court believes that Mr. Hilsee further enhanced his credibility when he deferred responding to the defendant's deposition questions at a time when he did not have the responsive data available and instead utilized the research facilities normally used in his industry to provide the requested information.*

Mr. Justice Peter Cumming, *Wilson v. Servier Canada, Inc.*,, 49 C.P.C. (4th) 233, [2000] O.J. No. 3392:

> *[A] class-notification expert, Mr. Todd Hilsee, to provide advice and to design an appropriate class action notice plan for this proceeding. Mr. Hilsee's credentials and expertise are impressive. The defendants accepted him as an expert witness. Mr. Hilsee provided evidence through an extensive report by way of affidavit, upon which he had been cross-examined. His report meets the criteria for admissibility as expert evidence. R. v. Lavallee, [1990] 1 S.C.R. 852.*

Judge Elaine E. Bucklo, *Carnegie v. Household International*, (Aug. 28, 2006) No. 98 C 2178 (N.D. Ill.):

> *Class members received notice of the proposed settlement pursuant to an extensive notice program designed and implemented by Todd B. Hilsee… Mr. Hilsee has worked with the Federal Judicial Center to improve the quality of class notice. His work has been praised by numerous federal and state judges.*

Judge Eldon E. Fallon, *Turner v. Murphy, USA, Inc.*, 2007 WL 283431, at *6 (E.D. La.):

> *Mr. Hilsee is a highly regarded expert in class action notice who has extensive experience designing and executing notice programs that have been approved by courts across the country. Furthermore, he has handled notice plans in class action cases affected by Hurricanes Katrina, Rita, and Wilma, see In re High Sulfur Content Gasoline Products Liability Litigation, MDL 1632, p. 15-16 (E.D. La. Sept. 6, 2006) (Findings of Fact and Conclusions of Law in Support of Final Approval of Class Settlement), and has recently published an article on this very subject, see Todd B. Hilsee, Gina M. Intrepido, & Shannon R. Wheatman, Hurricanes, Mobility, and Due Process: The "Desire to Inform" Requirement for Effective Class Notice is Highlighted by Katrina, 80 Tul. L.Rev. 1771 (2006) (detailing obstacles and solutions to providing effective notice after Hurricane Katrina).*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest*,** (February 13, 2007) No. CV-2006-409-3 (Cir. Ct. Ark.):

> *Having admitted and reviewed the Affidavit of Todd Hilsee, and received testimony from Mr. Hilsee at the Settlement Approval Hearing concerning the success of the notice campaign, including the fact that written notice reached 91.8% of the potential Class*

Members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class Members who had an earlier opportunity to request exclusion but failed to do so. The Court also concludes that the extremely small number of objections to the Stipulation and Proposed Settlement embodied therein supports the Court's decision to not offer a second exclusion window.

Judge William A. Mayhew, ***Nature Guard Cement Roofing Shingles Cases***., (June 29, 2006) J.C.C.P. No. 4215 (Cal. Super. Ct.):

The method for dissemination of notice proposed by class counsel and described by the Declaration of Todd Hilsee … constitute the fairest and best notice practicable under the circumstances of this case, comply with the

Judge Sarah S. Vance, *In re Educ. Testing Serv. PLT 7-12 Test Scoring Litig.*, 447 F.Supp.2d 612, 617 (E.D. La. 2006):

At the fairness hearing, the Court received testimony from the Notice Administrator, Todd Hilsee, who described the forms and procedure used to notify class members of the proposed settlement and their rights with respect to it . . . The Court is satisfied that notice to the class fully complied with the requirements of Rule 23.

Judge Douglas L. Combs, *Morris v. Liberty Mutual Fire Ins. Co.*, (Feb. 22, 2005) No. CJ-03-714 (D. Okla.):

I want the record also to demonstrate that with regard to notice, although my experience – this Court's experience in class actions is much less than the experience of not only counsel for the plaintiffs, counsel for the defendant, but also the expert witness, Mr. Hilsee, I am very impressed that the notice was able to reach – be delivered to 97 ½ percent members of the class. That, to me, is admirable. And I'm also – at the time that this was initially entered, I was concerned about the ability of notice to be understood by a common, nonlawyer person, when we talk about legalese in a court setting. In this particular notice, not only the summary notice but even the long form of the notice were easily understandable, for somebody who could read the English language, to tell them whether or not they had the opportunity to file a claim.

Judge John Speroni, *Avery v. State Farm,* (Feb. 25, 1998) No. 97-L-114 (Ill. Cir. Ct. Williamson Co.):

> *[T]his Court having carefully considered all of the submissions, and reviewed their basis, finds Mr. Hilsee's testimony to be credible. Mr. Hilsee carefully and conservatively testified to the reach of the Plaintiffs' proposed Notice Plan, supporting the reach numbers with verifiable data on publication readership, demographics and the effect that overlap of published notice would have on the reach figure . . . This Court's opinion as to Mr. Hilsee's credibility, and the scientific basis of his opinions is bolstered by the findings of other judges that Mr. Hilsee's testimony is credible.*

Judge John D. Allen, *Desportes v. American General Assurance Co.,* (April 24, 2007) No. SU-04-CV-3637 (Ga. Super. Ct.):

> [T]he Parties submitted the Affidavit of Todd Hilsee, the Court-appointed Notice Administrator and one of the preeminent class action notice experts in North America. After completing the necessary rigorous analysis, including careful consideration of Mr. Hilsee's Affidavit, the Court finds that [the notice] . . .fully satisfied the requirements of the Georgia Rules of Civil Procedure (including Ga. Code Ann. § 9-11-23(c)(2) and (e)), the Georgia and United States Constitutions (including the Due Process Clause), the Rules of the Court, and any other applicable law.

Judge Michael Maloan, *Cox v. Shell Oil,* 1995 WL 775363, at *6, (Tenn. Ch. Ct.):

> *Cox Class Counsel and the notice providers worked with Todd B. Hilsee, an experienced class action notice consultant, to design a class notice program of unprecedented reach, scope, and effectiveness. Mr. Hilsee was accepted by the Court as a qualified class notice expert . . . He testified at the Fairness Hearing, and his affidavit was also considered by the Court, as to the operation and outcome of this program.*

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (Oct. 30, 2001) No. MID-L-8839-00-MT (N.J. Super. Ct. Middlesex Co.):

> *The parties have crafted a notice program which satisfies due process requirements without reliance on an unreasonably burdensome direct notification process. The parties have retained Todd Hilsee... who has extensive experience designing similar notice programs...The form of the notice is reasonably calculated*

> *to apprise class members of their rights. The notice program is specifically designed to reach a substantial percentage of the putative settlement class members.*

Currie v. McDonald's Rests. of Canada Ltd., 2005 CanLll 3360 (ON C.A.):

> *The respondents rely upon the evidence of Todd Hilsee, an individual with experience in developing notice programs for class actions. In Hilsee's opinion, the notice to Canadian members of the plaintiff class in Boland was inadequate . . . I am satisfied that it would be substantially unjust to find that the Canadian members of the putative class in Boland had received adequate notice of the proceedings and of their right to opt out . . . I am not persuaded that we should interfere with the motion judge's findings . . . The right to opt out must be made clear and plain to the non-resident class members and I see no basis upon which to disagree with the motion judge's assessment of the notice. Nor would I interfere with the motion judge's finding that the mode of the notice was inadequate.*

Judge Jerome E. Lebarre, *Harp v. Qwest Commc'ns* (June 21, 2002) No. 0110-10986 (Ore. Cir. Ct. Multnomah Co.):

> *So, this agreement is not calculated to communicate to plaintiffs any offer. And in this regard I accept the expert testimony conclusions of Mr. Todd Hilsee. Plaintiffs submitted an expert affidavit of Mr. Hilsee dated May 23 of this year, and Mr. Hilsee opines that the User Guide was deceptive and that there were many alternatives available to clearly communicate these matters....*

Judge Dewey C. Whitenton, *Ervin v. Movie Gallery, Inc.,* (Nov. 22, 2002) No. 13007 (Tenn. Ch.):

> *Based on the evidence submitted and based on the opinions of Todd Hilsee, a well-recognized expert on the distribution of class notices . . . MGA and class counsel have taken substantial and extraordinary efforts to ensure that as many class members as practicable received notice about the settlement. As demonstrated by the affidavit of Todd Hilsee, the effectiveness of the notice campaign and the very high level of penetration to the settlement class were truly remarkable . . . The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.*

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Cir. Ct. Ark.):

> *Additionally, the Court was provided with expert testimony from Todd Hilsee at the Settlement Approval Hearing concerning the adequacy of the notice program. Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Individual Notice and the Publication Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminarily Approval Order, was the best notice practicable under the circumstances . . . and the requirements of due process under the Arkansas and United States Constitutions.*

Judge Fred Biery, *McManus v. Fleetwood Enter., Inc.*, (Sept. 30, 2003) No. SA-99-CA-464-F (W.D. Tex.):

> *Based upon the uncontroverted showing Class Counsel have submitted to the Court, the Court finds that the settling parties undertook a thorough notice campaign designed by Todd Hilsee . . . a nationally-recognized expert in this specialized field . . . The Court finds and concludes that the Notice Program as designed and implemented provided the best practicable notice to the members of the Class, and satisfied the requirements of due process.*

Judge Richard G. Stearns, *In re Lupron Marketing and Sales Practice Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005):

> *With respect to the effectiveness of notice, in the absence of any evidence to the contrary, I accept the testimony of Todd Hilsee that the plan he designed achieved its objective of exposing 80 percent of the members of the consumer class. . .*

Mr. Justice Maurice Cullity, *Parsons/Currie v. McDonald's Rests. of Can.*, (Jan. 13, 2004) 2004 Carswell Ont. 76, 45 C.P.C. (5th) 304, [2004] O.J. No.83:

> *I found Mr. Hilsee's criticisms of the notice plan in Boland to be far more convincing than Mr. Pines' attempts during cross-examination and in his affidavit to justify his failure to conduct a reach and frequency analysis of McDonald's Canadian customers. I find it impossible to avoid a conclusion that, to the extent that the notice plan he provided related to Canadian customers, it had not received more than a perfunctory attention from him. The fact that the information provided to the court was inaccurate and misleading and that no attempt was made to advise the court after*

the circulation error had been discovered might possibly be disregarded if the dissemination of the notice fell within an acceptable range of reasonableness. On the basis of Mr. Hilsee's evidence, as well as the standards applied in class proceedings in this court, I am not able to accept that it did.

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litig.,* (June 16, 2006) MDL-1539 (D. Md.):

In that regard, I would also comment on the notice. The form and scope of the notice in this case, and I'm repeating a little bit what already appeared to me to be evident at the preliminary stage, but the form and scope of the notice has been again remarkable . . . The use of sort of plain language, the targeting of publications and media, the website with the translation into multiple languages, the mailings that have been done, I think you all are to be congratulated, and Mr. Hilsee and Claims Administrator as well.

Judge Paul H. Alvarado, *Microsoft I-V Cases,* (July 6, 2004) J.C.C.P. No. 4106 (Cal. Super. Ct.):

[T]he Court finds the notice program of the proposed Settlement was extensive and appropriate. It complied with all requirements of California law and due process. Designed by an expert in the field of class notice, Todd B. Hilsee, the notice plan alone was expected to reach at least 80% of the estimated 14.7 million class members. (Hilsee Decl. Ex. 3, ¶28). The Settlement notice plan was ultimately more successful than anticipated and it now appears that over 80% of the class was notified of the Settlement.

Judge Denise L. Cote, ***In re SCOR Holding (Switzerland) AG Litig.,*** (October 24, 2007) No. 04-CV-7897 (S.D. NY):

I should say I have not had a case before, that I remember, at least, in which an issue of the extent to which notice would effectively be made outside this country, and that seems to be the principal point of the affidavit of Mr. Hilsee, which is the first exhibit to the October 12 submission, and I've reviewed it. It seems as if it proposes something reasonable in terms of a plan of action to obtain notice that would be consistent with the constitutional requirements of due process so a judgment could be effectively entered in this litigation, including a bar order.

Judge Marina Corodemus, *Talalai v. Cooper Tire & Rubber Co.,* (Sept. 13, 2002) No. L-008830.00 (N.J. Super. Ct. Middlesex Co.):

> *Here, the comprehensive bilingual, English and Spanish, court-approved Notice Plan provided by the terms of the settlement meets due process requirements. The Notice Plan used a variety of methods to reach potential class members. For example, short form notices for print media were place . . .throughout the United States and in major national consumer publications which include the most widely read publications among Cooper Tire owner demographic groups . . . Mr. Hilsee designed the notification plan for the proposed settlement in accordance with this court's Nov. 1, 2001 Order. Mr. Hilsee is . . . well versed in implementing and analyzing the effectiveness of settlement notice plans.*

Judge Lewis A. Kaplan, *In re Parmalat Securities Litig.,* (March 1, 2007) MDL No. 1653-LAK (S.D. N.Y.):

> *The court approves, as to form and content, the Notice and the Publication Notice, attached hereto as Exhibits 1 and 2, respectively, and finds that the mailing and distribution of the Notice and the publication of the Publication Notice in the manner and the form set forth in Paragraph 6 of this Order and in the Affidavit of Todd B. Hilsee meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Securities Exchange Act of 1934, as emended by Section 21D(a)(7) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(a)(7), and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all persons and entities entitled thereto.*

Judge Richard J. Shroeder, *St. John v. Am. Home Prods. Corp.,* (Aug. 2, 1999) No. 97-2-06368-4 (Wash. Super. Ct. Spokane Co.):

> *[T]he Court considered the oral argument of counsel together with the documents filed herein, including the Affidavit of Todd B. Hilsee on Notice Plan…The Court finds that plaintiffs' proposed Notice Plan is appropriate and is the best notice practicable under the circumstances by which to apprise absent class members of the pendency of the above-captioned Class Action and their rights respecting that action.*

Judge Carter Holly, *Richison v. Am. Cemwood Corp.,* (Nov. 18, 2003) No. 005532 (Cal. Super. Ct. San Joaquin Co.):

> *The parties undertook an extensive notice campaign designed by a nationally recognized class action notice expert. See generally, Affidavit of Todd B. Hilsee on Completion of Additional Settlement Notice Plan.*

Judge Kirk D. Johnson, ***Sweeten v. American Empire Insurance Co.,*** (August 20, 2007) Cir. Ct. Ark., No. CV-2007-154-3:

> *Let [Mr. Hilsee] be so admitted for the purposes of this hearing, having been previously admitted by the Court and the Court having found his qualifications exemplary in this field.*

Judge Robert Wyatt, ***Gunderson v. F.A. Richard & Associates, Inc.,*** (July 19 2007) Cir. Ct. 14th Jud. D. Ct. La., No. 2004-2417-D:

> *The Court will so accept [Mr. Hilsee as an expert] on issues of the content and dissemination of legal notices, including Class Action Notices and notice campaigns.*

Judge John R. Padova, *Rosenberg v. Academy Collection Service, Inc.* (Dec. 19, 2005) No. 04-CV-5585 (E.D. Pa.):

> *[U]pon consideration of the Memorandum of Law in Support of Plaintiff's Proposed Class Questionnaire and Certification of Todd Hilsee, it is hereby ORDERED that Plaintiff's form of class letter and questionnaire in the form appended hereto is APPROVED. F.R.Civ.P. 23(c).*

Judge Bernard Zimmerman, *Ting v. AT&T,* 182 F.Supp.2d 902, 912-913 (N.D. Cal. 2002) (Hilsee had testified on the importance of wording and notice design features):

> *The phrase 'Important Information' is increasingly associated with junk mail or solicitations . . . From the perspective of affecting a person's legal rights, the most effective communication is generally one that is direct and specific.*

Judge David De Alba, *Ford Explorer Cases*, (Aug. 19, 2005) J.C.C.P. Nos. 4226 & 4270 (Cal. Super. Ct., Sacramento Co.):

> *It is ordered that the Notice of Class Action is approved. It is further ordered that the method of notification proposed by Todd B. Hilsee is approved.*

Judge Louis J. Farina, *Soders v. General Motors Corp.* (Oct. 31, 2003) No. CI-00-04255 (Pa. C.P. Lancaster Co.):

> *In this instance, Plaintiff has solicited the opinion of a notice expert who has provided the Court with extensive information explaining and supporting the Plaintiff's notice plan…After balancing the factors laid out in Rule 1712(a), I find that Plaintiff's publication method is the method most reasonably calculated to inform the class members of the pending action.*

Judge Eldon E. Fallon, *Turner v. Murphy, USA, Inc.*, 2007 WL 283431, at *5 (E.D. La.):

> *Most of the putative class members were displaced following hurricane Katrina . . . With this challenge in mind, the parties prepared a notice plan designed to reach the class members wherever they might reside. The parties retained Todd Hilsee . . . to ensure that adequate notice was given to class members in light of the unique challenges presented in this case.*

Judge Ronald B. Leighton, *Grays Harbor Adventist Christian School v. Carrier Corporation*, (May 29, 2007) No. 05-05437 (W.D. Wash):

> *The Court has considered this motion, the Affidavit of Todd B. Hilsee on Class Certification Notice Plan and the exhibits attached thereto, and the files and records herein. Based on the foregoing, the Court finds Plaintiffs' Motion for Approval of Proposed Form of Notice and Notice Plan is appropriate and should be granted.*

Judge Richard J. Holwell, *In re Vivendi Universal, S.A. Securities Litig.*, 2007 WL 1490466, at *34 (S.D.N.Y.):

> *In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit outlining the effectiveness of its proposed method of providing notice in foreign countries. (See Affidavit of Todd B. Hilsee on Ability to Provide Multi-National Notice to Class Members, Dec. 19, 2005 ("Hilsee Aff.") ¶ 7.) According to this . . . the Court is satisfied that plaintiffs intend to provide individual notice to those class members whose names and addresses are ascertainable, and that plaintiffs' proposed form of publication notice, while complex, will prove both manageable and the best means practicable of providing notice.*

Judge Catherine C. Blake, *In re Royal Ahold Securities & "ERISA" Litig.*, 2006 WL 132080, at *4 (D. Md.):

> *The Court further APPROVES the proposed Notice Plan, as set forth in the Affidavit of Todd B. Hilsee On International Settlement Notice Plan, dated December 19, 2005 (Docket No. 684). The Court finds that the form of Notice, the form of Summary Notice, and the Notice Plan satisfy the requirements of Fed.R.Civ.P. 23, due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all members of the Class.*

Judge John D. Allen, *Carter v. North Central Life Ins. Co.*, (April 24, 2007) No. SU-2006-CV-3764-6 (Ga. Super. Ct.):

> [T]he Parties submitted the Affidavit of Todd Hilsee, the Court-appointed Notice Administrator and one of the pre-eminent class action notice experts in North America. After completing the necessary rigorous analysis, including careful consideration of Mr. Hilsee's Affidavit, the Court finds that . . . The Notices prepared in this matter were couched in plain, easily understood language and were written and designed to the highest communication standards. The Notice Plan effectively reached a substantial percentage of Class Members and delivered noticeable Notices designed to capture Class Members' attention;

Judge Louis J. Farina, *Soders v. General Motors Corp.*, (Oct. 31, 2003) No. CI-00-04255 (Pa. C.P. Lancaster Co.):

> *Plaintiff provided extensive information regarding the reach of their proposed plan. Their notice expert, Todd Hilsee, opined that their plan will reach 84.8% of the class members. Defendant provided the Court with no information regarding the potential reach of their proposed plan . . . There is no doubt that some class members will remain unaware of the litigation, however, on balance, the Plaintiff's plan is likely to reach as many class members as the Defendant's plan at less than half the cost. As such, I approve the Plaintiff's publication based plan.*

Judge Paul H. Alvarado, *Microsoft I-V Cases*, (July 6, 2004) J.C.C.P. No. 4106 (Cal. Super. Ct.):

> *The notification plans concerning the pendency of this class action were devised by a recognized class notice expert, Todd B. Hilsee. Mr. Hilsee devised two separate class certification notice plans*

that were estimated to have reached approximately 80% of California PC owners on each occasion.

Judge Robert E. Payne, *Fisher v. Virginia Electric & Power Co.,* (Feb. 12, 2004) No. 3:02-CV-431 (E.D. Va.):

The expert, Todd B. Hilsee, is found to be reliable and credible.

Judge Sarah S. Vance, *In re Educ. Testing Serv. PLT 7-12 Test Scoring Litig.,* 447 F.Supp.2d 612, 627 (E.D. La. 2006):

At the fairness hearing, class counsel, the Special Master, notice expert Todd Hilsee, and the Court Appointed Disbursing Agent detailed the reasons for requiring claims forms . . . As Todd Hilsee pointed out in his testimony, because plaintiffs had the choice of either individualized damages or an expedited payment, to send the expedited payments with the notice has the potential of encouraging plaintiffs to forego individualized recovery for far less than value, merely by cashing the check. The obvious undesirability of this suggestion gives the unmistakable appearance that the objection was captious. The objection to the claims process for expedited payments is overruled.

Judge Richard G. Stearns, *In re Lupron® Marketing and Sales Practice Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005):

I have examined the materials that were used to publicize the settlement, and I agree with Hilsee's opinion that they complied in all respects with the "plain, easily understood language" requirement of Rule 23(c). In sum, I find that the notice given meets the requirements of due process.

Judge John R. Padova, Nichols v. SmithKline Beecham Corp., (Apr. 22, 2005) No. 00-CV-6222 (E.D. Pa.):

As required by this Court in its Preliminary Approval Order and as described in extensive detail in the Affidavit of Todd B. Hilsee on Design Implementation and Analysis of Settlement Notice Program…Such notice to members of the Class is hereby determined to be fully in compliance with requirements of Fed. R. Civ. P. 23(e) and due process and is found to be the best notice practicable under the circumstances and to constitute due and sufficient notice to all entities entitled thereto.

Judge Sarah S. Vance, *In re Babcock & Wilcox Co.,* (Aug. 25, 2000) No. 00-0558 (E.D. La.):

> *Furthermore, the Committee has not rebutted the affidavit of Todd Hilsee. . . that the (debtor's notice) plan's reach and frequency methodology is consistent with other asbestos-related notice programs, mass tort bankruptcies, and other significant notice programs…After reviewing debtor's Notice Plan, and the objections raised to it, the Court finds that the plan is reasonably calculated to apprise unknown claimants of their rights and meets the due process requirements set forth in Mullane . . . Accordingly, the Notice Plan is approved.*

Judge Joe E. Griffin, *Beasley v. Hartford Insurance Company of the Midwest,* (June 13, 2006) No. CV-2005-58-1 (Cir. Ct. Ark.):

> *[R]eceived testimony from Mr. Hilsee at the Settlement Approval Hearing concerning the success of the notice campaign, including the fact that written notice reached 97.7% of the potential Class members, the Court finds that it is unnecessary to afford a new opportunity to request exclusion to individual Class Members who had an earlier opportunity to request exclusion, but did not do so. The Court also concludes that the lack of valid objections also supports the Court's decision to not offer a second exclusion window . . . Although the Notice Campaign was highly successful and resulted in actual mailed notice being received by over 400,000 Class Members, only one Class Member attempted to file a purported objection to either the Stipulation or Class Counsels' Application for Fees. The Court finds it significant that out of over 400,000 Class Members who received mailed Notice, there was no opposition to the proposed Settlement or Class Counsels' Application for Fees, other than the single void objection. The lack of opposition by a well-noticed Class strongly supports the fairness, reasonableness and adequacy of the Stipulation and Class Counsels' Application for Fees.*

Judge James R. Williamson, Kline v. The Progressive Corp., (Nov. 14, 2002) No. 01-L-6 (Cir. Ct. Ill. Johnson Co.):

> *The Court has reviewed the Affidavit of Todd B. Hilsee, one of the Court-appointed notice administrators, and finds that it is based on sound analysis. Mr. Hilsee has substantial experience designing and evaluating the effectiveness of notice programs.*

Judge Ross P. LaDart, ***Meckstroth v. Toyota Motor Sales USA, Inc.,*** (February 7, 2007) No. 583-318 (24th Jud. D. Ct. La.):

> *[U]nless there's any objection, the Court is aware of Mr. Hilsee's reputation. I'm aware of the most recent Tulane Law Review and other publications by you and members of your staff. He's so accepted as an expert as tendered.*

Judge Joseph R. Goodwin, ***In re Serzone Products Liability Litig.,*** 231 F.R.D. 221, 236 (S.D. W. Va. 2005):

> *As Mr. Hilsee explained in his supplemental affidavit, the adequacy of notice is measured by whether notice reached Class Members and gave them an opportunity to participate, not by actual participation. (Hilsee Supp. Aff. ¶ 6(c)(v), June 8, 2005)...Not one of the objectors support challenges to the adequacy of notice with any kind of evidence; rather, these objections consist of mere arguments and speculation. I have, nevertheless, addressed the main arguments herein, and I have considered all arguments when evaluating the notice in this matter. Accordingly, after considering the full record of evidence and filings before the court, I FIND that notice in this matter comports with the requirements of Due Process under the Fifth Amendment and Federal Rules of Civil Procedure 23(c)(2) and 23(e).*

Judge Kirk D. Johnson, ***Zarebski v. Hartford Insurance Company of the Midwest,*** (February 13, 2007) No. CV-2006-409-3 (Cir. Ct. Ark):

> *Additionally, the court was provided with expert testimony from Todd Hilsee at the Settlement Approval Hearing concerning the adequacy of the notice program . . . Based on the Court's review of the evidence admitted and argument of counsel, the Court finds and concludes that the Class Notice, as disseminated to members of the Settlement Class in accordance with provisions of the Preliminary Approval Order, was the best notice practicable under the circumstances to all members of the Settlement Class.*

Judge Alfred G. Chiantelli, ***Williams v. Weyerhaeuser Co.,*** (Dec. 22, 2000) No. 995787 (Cal. Super. Ct. San Francisco Co.):

> *The Class Notice complied with this Court's Order, was the best practicable notice, and comports with due process . . . Based upon the uncontroverted proof Class Counsel have submitted to the Court, the Court finds that the settling parties undertook an extensive notice campaign designed by Todd Hilsee . . . a nationally recognized expert in this specialized field.*

Judge Kirk D. Johnson, ***Sweeten v. American Empire Insurance Co.,*** (August 20, 2007) Cir. Ct. Ark., No. CV-2007-154-3:

> *[T]he Court . . . of course has recognized the testimony of Todd Hilsee . . . which was given here today in open court, and Mr. Hilsee being admitted as an expert in this particular field . . .*

Judge Ivan L.R. Lemelle, ***In re High Sulfur Content Gasoline Prods. Liability Litig.,*** (November 8, 2006) MDL No. 1632 (E.D. La.):

> *[T]his Court approved a carefully-worded Notice Plan. . . See Affidavit of Todd B. Hilsee on Motion by Billy Ray Kidwell, attached as Exhibit A; see also, Affidavit of Todd B. Hilsee, attached as Exhibit C to the Joint Motion for Final Approval of Class Settlement (Record Doc. No. 71); Testimony of Todd Hilsee at Preliminary Approval Hearing, Tr. pp 6-17, attached as Exhibit B; Testimony of Todd Hilsee at Final Fairness Hearing, Tr. pp. 10-22, attached as Exhibit C.*

Regional Senior Justice Winkler, *Baxter v. Canada (Attorney General),* (March 10, 2006) No. 00-CV-192059- CPA (Ont. Super. Ct.):

> *The plaintiffs have retained Todd Hilsee, an expert recognized by courts in Canada and the United States in respect of the design of class action notice programs, to design an effective national notice program . . . the English versions of the Notices provided to the court on this motion are themselves plainly worded and appear to be both informative and designed to be readily understood. It is contemplated that the form of notice will be published in English, French and Aboriginal languages, as appropriate for each media vehicle.*

Judge James T. Genovese, *West v. G&H Seed Co.,* (May 27, 2003) No. 99-C-4984-A (La. Jud. Dist. Ct. St. Landry Parish):

> *The court finds that, considering the testimony of Mr. Hilsee, the nature of this particular case, and the certifications that this court rendered in its original judgment which have been affirmed by the – for the most part, affirmed by the appellate courts, the court finds Mr. Hilsee to be quite knowledgeable in his field and certainly familiar with these types of cases…the notice has to be one that is practicable under the circumstances. The notice provided and prepared by Mr. Hilsee accomplishes that purpose . . .*

Judge Milton Gunn Shuffield, *Scott v. Blockbuster Inc.,* (Jan. 22, 2002) No. D 162-535 (Tex. Jud. Dist. Ct. Jefferson Co.):

> *In order to maximize the efficiency of the notice . . .Todd Hilsee . . . prepared and oversaw the notification plan. The record reflects that Mr. Hilsee is very experienced in the area of notification in class action settlements…This Court concludes that the notice campaign was the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the settlement and afford them an opportunity to present their objections . . . The notice campaign was highly successful and effective, and it more than satisfied the due process and state law requirements for class notice.*

Judge Richard G. Stearns, *In re Lupron Marketing and Sales Practice Litig.*, 228 F.R.D. 75, 84 (D. Mass. 2005):

> *Todd B. Hilsee . . . has served as a notice expert in more than 175 class action cases, including In re Holocaust Victims Assets Litig., No. CV-96-4849 (E.D.N.Y.); In re Domestic Air Transp. Antitrust Litig., MDL 861 (N.D.Ga.); In re Dow Corning Corp., 95-20512-11 (Bankr.E.D.Mich.); In re Synthroid Mktg., MDL 1182 (N.D.Ill.); and In re Bridgestone/Firestone Tires Prods. Liab. Litig., MDL No. 1373 (S.D.Ind.). Hilsee was the only notice expert invited to testify before the Advisory Committee on Civil Rules on the amendment to Rule 23 requiring "clear, concise, plain language notices." Hilsee was also asked by the Federal Judicial Center to design model notices to illustrate Rule 23 plain language "best practices."…*

Judge Susan Illston (N.D. Cal.), on Todd Hilsee's presentation at the ABA's 7th Annual National institute on Class Actions, Oct. 24, 2003, San Francisco, Cal.:

> *The notice program that was proposed here today, I mean, it's breathtaking. That someone should have thought that clearly about how an effective notice would get out. I've never seen anything like that proposed in practice . . . I thought the program was excellent. The techniques available for giving a notification is something that everyone should know about.*

Madam Justice Joan L. Lax, *Donnelly v. United Technologies,* (October 27, 2008) No. 06-CV-320045CP (Ont. Super. Ct.):

> *. . .Todd Hilsee, an expert recognized by courts in Canada and the United State in respect of the design of class action notice programs, described the Canadian Notice Plan. . .I am satisfied*

> *that Mr. Hilsee's plan is comprehensive, that it will have a high 'reach'. . .*

Madam Justice Joan L. Lax, *Wong v. TJX,* (February 4, 2008) No. 07-CT-000272CP (Ont. Super. Ct.):

> *Mr. Hilsee has been recognized as a notice expert in Canadian class proceedings as well as in the United States. The proposed notice plan not only comports with Canadian standards, but it has virtually the same coverage as in the United States.*

Oregon Court of Appeals, *Froeber v. Liberty Mutual,* (September 10, 2008) No. A132263 (Judge Rex Armstrong):

> *As to the notice issue, defendants introduced the testimony of Hilsee, an expert on notice who helped the parties in this case draft, create, and disseminate the notice. Hilsee testified, among other things, that the format of the notice followed standards set in national model notices, that the content of the notice adequately informed readers of the claims that the settlement released, and that including specific information about the putative Delaware action would have fostered confusion rather than clarity. After counsel for defendants and for objectors presented arguments, the trial court rejected objectors' notice argument by finding that "the notice is adequate. I feel the testimony by Mr. Hilsee is persuasive. . ." [T]hose conclusions had support in Hilsee's expert testimony, which--although such expert testimony is not strictly required to support a determination that notice is adequate--lent persuasive support that objectors did not counter or controvert with evidence of their own.*

Judge Colleen Mary O'Toole, *West v. Carfax,* (December 24, 2009) 2009-Ohio-6857, (Ohio Court of Appeals); 2009 WL 5064143 (Ohio App. 11 Dist.):

> *[Appellants] question the effectiveness of email notice to post-2003 customers, observing that many people simply delete unsolicited emails as spam. Further, through the affidavit testimony of their expert, Todd B. Hilsee, they question whether mail notice was not possible to the balance of Carfax customers. Mr. Hilsee is a nationally-recognized expert in designing notices for class actions. . . Mr. Hilsee testified that similar procedures are routine in automotive litigation. Mr. Hilsee also questioned the efficacy of the publication notice given in Investor's Business Daily and USA Today, testifying that these papers were unlikely to be read by the population demographic which dominates the used car market.*

We agree with appellants that, pursuant to Eisen, the notice provided in this case was defective.

Mr. Justice J.R. Henderson, *Smith v. Inco,* (November 13, 2009) No. 12023/01 (Ontario Super. Ct.):

I also find that Hilsee is qualified to provide an opinion on these Issues. Hilsee has been accepted as an expert witness in many courts in the United States of America as to the design and implementation of notice programs created to notify class members of their rights with respect to class actions. He has also provided prospective and retrospective analyses of such notice programs, both in Canada and the USA. . .Given his education, work experience, and prior court involvement, I accept that Hilsee has an expertise in the fields of comprehension, dissemination, and readability of public documents.

Judge David S. Gorbaty, *Orrill v. AIG,* *Orrill v. AIG, Inc.*, 38 So. 3d 457, 462-466 (La.App. 4 Cir. 2010):

It is our opinion that the persons who were suddenly subsumed into Orrill settlement class did not receive adequate notice and were not adequately represented. . . The appellants also presented the testimony of Todd Hilsee, who the court accepted as an expert in communications and notice. . . Appellants' expert, Todd Hilsee, opined that the notice in this case was woefully inadequate in terms of what a qualified professional would use to actually inform the class of its rights and options.

Judge F. Pat VerSteeg, *Weber v. Mobil Oil,* (March 21, 2011) Case No. CJ-2001-53 (District Court of Custer County, State of Oklahoma):

Based upon testimony of the class notice expert, Todd Hilsee, approximately 40% of the putative class resides outside of the State of Oklahoma. No provision of the notice distribution plan suggests a methodology to reach those absent class members residing outside the State of Oklahoma, or for that matter, outside Dewey and Custer Counties. To be adequate, the notice plan and design must include a methodology whereby the Court can objectively determine the effectiveness of the class members reached. This is measured by a percentage of at least 70% or more. Without a calculation methodology the court has no objective basis from which a notice plan can be evaluated.

Judge M. Joseph Tiemann, *Billieson v. Housing Authority of New Orleans,* (May 27, 2011) Case No. 94-19231 (Civil District Court for The Parish Of Orleans, State Of Louisiana):

> *[T]he Court also gave consideration to the following…The fact that Mr. Hilsee is a highly-regarded Notice Expert, and has provided thoughtful, scientific, carefully researched and detailed reports, analyses, and ultimately, his Affidavit. His recommendations are grounded in relevant experience regarding communicating complex legal information to class members in class action litigation. He was a lead author of the Federal Judicial Center's (the "FJC") Model Plain Language Notices, as well as the FJC publication entitled 2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, and he contributed content on the subject of notice to the FJC's 2010 3rd edition of Managing Class Actions: A Pocket Guide for Judges (all of which may be found at www.fjc.gov.)*

Judge Joan B. Gottschall, *Kaufman v. American Express,* (August 2, 2012) Case No. 07-01707 (United States District Court for the Northern District of Illinois):

> *After considering several proposed notice experts for the purpose of undertaking a second round of notice in this case, the court gave the Settling Parties an opportunity to respond to the proposed appointment of Todd B. Hilsee. The court has reviewed the Settling Parties' objections to Mr. Hilsee's appointment as well as the resumes of all proposed experts. The court does not view the objections to Mr. Hilsee's appointment as substantial. Mr. Hilsee appears to be the most qualified and experienced expert of those proposed, and the court concludes that he is an appropriate expert for this type of case*

Judge Joan B. Gottschall, *Kaufman v. American Express,* (August 9, 2013) Case No. 07-01707 (United States District Court for the Northern District of Illinois):

> *With regard to the limited opposition filed by the intervenors, the court agrees with the position taken by Mr. Hilsee, the court-appointed notice expert, that references to the intervenors' objections in the Supplemental Notice would not be neutral and would potentially prejudice class members, who can decide for themselves whether to object to or opt out of the settlement.*

Academic and Practitioner Comments

Arthur R. Miller, Professor of Law, Harvard Law School:

> *I read your piece on* *Mullane* *with great interest and am delighted to learn the details. Indeed, I will probably incorporate some of it in my teaching next fall. I think your analysis is rock solid.*

Dianne M. Nast, Partner, RodaNast, P.C.:

> *Your testimony in Atlanta on Tuesday was exceptional. Rarely does one find a witness so well prepared, so thoughtful, careful and accurate in response to questioning, and so sincerely committed to careful preparation and accurate testimony. We are all appreciative of the extra effort you brought to the task. If the court rules in our favor, it will surely be in some measure as a result of your testimony. If the court does not rule in our favor, it certainly will not be as a result of anything you omitted or failed to do.*

Eugene I. Goldman, Partner, McDermott, Will & Emery LLP:

> *Hilsee was the defendant MCI's notice expert in two consolidated consumer class actions filed in Augusta, Georgia. Hilsee recognized that the socio-economics of class members indicated that the "traditional" media vehicles for notice, i.e., Wall Street Journal, would not reach many class members. Hilsee provided an affidavit and in-court testimony in favor of a plan that involved easy to understand notice in multiple publications. . . He also testified against an alternative plan presented by plaintiffs, which he felt was inferior. Hilsee was questioned by counsel for the parties as well as the Court. The Judge was impressed by Mr. Hilsee's expertise and accepted Mr. Hilsee's advice by ordering the implementation of Mr. Hilsee's notice plan.*

Darren E. Baylor, Associate Director, American Bar Association Center for Continuing Legal Education:

> *Todd has definitely developed an entertaining and informative presentation on effective notice techniques that creatively connect the class member to class action claims. He presents his information in a way that educates and engages the audience while providing a refreshing perspective on claims notification.*

F. Paul Bland, Jr., Staff Attorney, Public Justice:

Hilsee has a deep and extensive knowledge of communications strategies and marketing for consumers. In several hotly contested cases, he has served as an expert witness on behalf of my clients, and his thoughtful, thorough and careful analyses stood up brilliantly through white-hot cross-examinations and probing. I've also seen a good deal of his work in the class action notice area, and he's a nationally recognized leader in that field.

Elizabeth J. Cabraser, Partner, Lieff, Cabraser, Heimann & Bernstein, LLP, at Tulane Law School, February 2008:

Todd Hilsee understands and appreciates the profound implications of notice on due process more than many, many lawyers. . . He is a notice expert; he is a communications expert; but his dedication to the idea of due process through communication transcends his work assignments and his living. . . He is a low key, personable person; very matter of fact about what he does. Do not be fooled; he is a giant in the field.

Robert J. Niemic, Senior Staff Attorney, Federal Judicial Center:

Todd Hilsee deserves one of the strongest endorsements I can give for his expertise on class action notice processes, his hands-on contributions to revising notices into plain language documents that now serve as "models" for the industry, and his colleagues' widespread recognition of him as a foremost world expert. All the work that Todd did for the Federal Judicial Center (my employer) was pro bono. His commitment to the cause of creating more understandable and complete notices for class action plaintiffs is unparalleled, in my experience. The resulting illustrative notices (posted at www.fjc.gov) reflect significant improvements, in terms of form, clarity, and plain language. Todd has had a huge national impact on the field of class actions that will endure and continue. He is enthusiastic and it's inspiring and enjoyable working with him.

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Case Experience

Todd B. Hilsee's case experience includes the following partial listing of cases (inclusive of all cases in which testimony provided at deposition or trial in past 4 years as marked with *):

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Anesthesia Care Assocs. v. Blue Cross of Cal.		Cal. Super. Ct., No. 986677
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In re Estate of Ferdinand Marcos		D. Hawaii, MDL No. 840
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In re Ford Motor Co. Vehicle Paint Litig.		E.D. La., 95-0485, MDL No. 1063
In re GM Truck Fuel Tank Prods. Liability Litig.		E.D. Pa., MDL No. 1112
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In re: Whirlpool Corp. Frontloading Washer Products Liability Litigation	*	N.D. Ohio, 1:08-wp-65000
Int'l Commission on Holocaust Era Ins. Claims – Worldwide Outreach Program		Former Secretary of State Lawrence Eagleburger Commission
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Jacobs v. Winthrop Fin. Assocs.		D. Mass., 99-CV-11363
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Johnson v. Norwest Fin. Alabama		Cir. Ct. Ala., CV-93-PT-962-S
Johnson v. Progressive		Cir. Ct. Ark., No. CV-2003-513
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Luikart v. Wyeth Am. Home Products		Cir. Ct. W. Va., No. 04-C-127
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Mantzouris v. Scarritt Motor Group		M.D. Fla., No. 8:03-CV-0015-T-30-MSS
McCall v. John Hancock		Cir. Ct. N.M., No. CV-2000-2818
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National Socialist Era Compensation Fund		Republic of Austria
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Nichols v. SmithKline Beecham		E.D. Pa., No. 00-6222
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Olinde v. Texaco		M.D. La., No. 96-390
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Oubre v. Louisiana Citizens	*	24th Jud. Dist. Ct., La., No. 625-567
Palace v. Daimler Chrysler		Cir. Ct. Ill., Cook Co., No. 01-CH-13168
Parsons/Currie v. McDonalds Rest's.		Ont. Sup. Ct., No. 02-CV-235958CP/No. 02-CV-238276
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Pease v. Jasper Wyman & Son, Merrill Blueberry Farms Inc., Allen's Blueberry Freezer Inc. & Cherryfield Foods Inc.		Me. Super. Ct., No. CV-00-015
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Pennington v. Coca Cola		Cir. Ct. Mo. Jackson Co., No. 04-CV-208580
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Peyroux v. The United States of America		E.D. La., No. 06-2317
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Santos v. Government of Guam		D. Guam, No. 04-00049
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Stetser v. TAP Pharm. Prods. & Abbott Laboratories		N.C. Super. Ct., No. 01-CVS-5268
Stewart v. Avon Prods.		E.D. Pa., 98-CV-4135
Sunderman v. Regeneration Technologies		S.D. Ohio, No. 1:06-CV-075-MHW
Sweeten v. American Empire Insurance	*	Cir. Ct. Ark., No. 2007-154-3
Talalai v. Cooper Tire & Rubber		N.J. Super. Ct., Middlesex County, No. MID-L-8839-00 MT
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Tempest v. Rainforest Café		D. Minn., 98-CV-608
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Thibodeaux v. Conoco Philips		D. La., No. 2003-481
Thompson v. Metropolitan Life Ins.		S.D. N.Y., No. 00-CIV-5071 HB
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Tobacco Farmer Transition Program		U.S. Dept. of Agric.
Tuck v. Whirlpool & Sears, Roebuck		Cir. Ct. Ind. Marion Co., No. 49C01-0111-CP-002701
Turner v. Murphy Oil USA	*	E.D. La., No. 2:05-CV-04206-EEF-JCW
Walker v. Rite Aid of PA		C.P. Pa., No. 99-6210
Walker v. Tap Pharmaceutical Prods.		N.J. Super. Ct., No. CV CPM-L-682-01
Walls v. Am. Tobacco		N.D. Okla., 97-CV-218-H
Walton v. Ford Motor		Cal. Super. Ct., No. SCVSS 126737
Webb v. Liberty Mutual Insurance		Cir. Ct. Ark., No. CV-2007-418-3
Weber v. Mobil Oil	*	Dist. Ct. Okla., No. CJ-2001-53

Wells v. Chevy Chase Bank		Cir. Ct. Md. Balt. City, No. C-99-000202
West v. Carfax		Ohio C.P., No. 04-CV-1898 (ADL)
West v. G&H Seed		27th Jud. D. Ct. La., No. 99-C-4984-A
Westman v. Rogers Family Funeral Home		Cal. Super. Ct., No. C-98-03165
Whetman v. IKON		E.D. Pa., Civil No. 00-87
White v. Washington Mutual		4th Jud. D. Ct. Minn., No. CT 03-1282
Williams v. Weyerhaeuser		Cal. Super. Ct., CV-995787
Wilson v. Servier Canada		Ont. Super. Ct., 98-CV-158832
Withrow v. Enterprise		Cir. Ct. of St. Louis, Mo., No. 10SL-CC01712
Wong v. TJX		Ont. Super. Ct., No. 07-CT-000272CP
Woodard v. Andrus		E.D. La., 2:03 CV2098
World Holdings v. Federal Republic of Germany		S.D. Fla., 1:08-cv-20198
Yacout v. Federal Pacific Electric		N.J. Super. Ct., No. MID-L-2904-97
Zarebski v. Hartford Insurance Co. of the Midwest	*	Cir. Ct. Ark., No. CV-2006-409-3

Work Experience

The Hilsee Group LLC	Feb. 2008 - Present	Principal
Hilsoft Notifications	Oct. 1994 – Feb. 2008	President
Foote Cone & Belding	1987 – 1994	Account Director
Greenwald/Christian	1985 – 1987	Account Executive
McAdams & Ong	1983 – 1985	Media Planner

Education

The Pennsylvania State University 1982 B.S. Marketing Management

EXHIBIT C

Remington Firearms Class Action Settlement

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September 27 ·

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Gary Robinson My brorher and I did a remote fly in moose hunt in Qubec. After a morning hunt we were preparing to get into our boat and his 300 mag went off unexpectedly in his hand. I was 10 feet away and in the boat looking away. When i turned around he had bloo... See More
Like · Reply · 3 · September 29 at 5:09pm

3 Replies

Sam Hurst Finally, they knew about this problem years ago. Remington wouldn't do anything to fix the problem. The military stopped using the 700's because of this problem. I won't but another Remington until I know the problem is solved!
Like · Reply · 1 · September 29 at 3:52am

1 Reply

Frank Wayland I read about this a long time ago. Remington decided to save a few pennies per unit, and went with a system they knew to be inferior. I think it was about 15 cents per unit savings, and the engineers warned them not to do it, but they did, and I believ... See More
Like · Reply · October 13 at 7:10am

Dnh Stoll Mine actually does not work correctly, I would call it a delay fire, sometimes it can be 30 seconds. It really depends on the temperature outside. I don't think that makes me an idiot.
Like · Reply · 1 · October 2 at 1:40pm

2 Replies

Michael A. Brodine This is just a Anti-Gun or destroy Remington attempt. I've hunted with this trigger for years. No misfires. If a gun goes off when your pointing someone, that's your fault, didn't control your barrel aim..
Like · Reply · October 17 at 2:30pm

Lanny Boston A recall was issued, this has been on Remington's Web Site for years. So WHO? put up this post and why do they want you to give them your name? Just go to Remington's Web Page.
Like · Reply · 2 · October 13 at 1:32am · Edited

Craig Dorn This is not a made up problem. I have a model 700 in 7mm. Was doing a demonstration on the rente for a hunter safety class and the gun fired

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VISITOR POSTS

Bryan Greer
October 16 at 1:04pm

This is just another way for the lawyers to make millions off the backs of poor dumb slobs! You will get nothing from this!!

Like · Comment

Jordan Paul
October 14 at 10:02am

This is ridiculous.

Like · Comment

Franklin Hughes
April 17 at 1:13pm

Sandy hook was faked. No one died. I hope you all know that you're going to burn in hell for your part in this lie.

Like · Comment

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hat (17)

when a clicked the safety off. Pointed safely down range but I still dribbled down both legs. I would not want ... See More
Like · Reply · October 18 at 6:49pm

1 Reply

Betty Carolus I have a remington 30 the only thing i've experienced out of the ordinary is i pulled the trigger on remington brand cartriges and twice the gun never went off so i inspected the cartrige the firing pin made contact but it never went off.That's bad cartriges not bad guns i think its a hoax
I have a few remingtons and have never had any bad luck but will take extra precautions just to be on thesafe side.
Like · Reply · October 10 at 7:37pm

1 Reply

Joe Alspaugh I had one that was on the list (it had never failed) I called Remington, they sent me a postage paid box, I sent it to them, got it back in 2 weeks, still works great, didn't cost me a cent, problem solved!!!
Like · Reply · 2 · October 10 at 7:23am

Todd Kupferer Hey, let's make these freaking lawyers rich. No one gets anything from a class action lawsuit except the law firms that bring them on. They are a bunch of bottom dwelling f$!@#.
Like · Reply · 3 · October 15 at 2:34am

2 Replies

Mark Runk Only a liberal would expect money for nothing. And for what you 12 dollars or something insignificant and run the gun mfg out of buisness over your 12 dollars. Liberal logic at its best for fools who don't know tear ass from a hole in the ground.
Like · Reply · 1 · October 1 at 8:18am

1 Reply

Bill Beard Remington makes excellent firearms contrary to what lame stream media likes to say . Just more anti gunners looking to harm our gun makers for their ratings.
Like · Reply · 1 · October 23 at 9:38am

John Powers I'm sorry even if there's a problem with the safety on this rifle the model 700 bolt action is still one of the best just get it fixed simple
Like · Reply · 2 · October 21 at 10:09am

Frank Crenshaw My 700 in 308 went off once. It was pointed in a safe direction, and freaked me out, but other than that one incident, it's been fine. I'm never comfortable when using this rifle though. I'm going to send it in.
Like · Reply · 1 · October 15 at 11:02am

2 Replies

Daniel Martin Just don't buy a damn Remington bolt action rifle, or any Remingtons for that matter. Since they took over from Marlin, the marlin lever guns have become junk.
Like · Reply · October 21 at 9:51pm

1 Reply

David Palmaro I got rid of my 700 7mm mag, it was a death trap, that God, I used prpoper gun saftey always, never point the barrel, at any one, gun went off so many times.
Like · Reply · October 13 at 10:29pm

1 Reply

Leon Swiger I might go on its a scheme to find out who as firearms. But there was story on 60 minutes a couple years back and there is videos on line show some of them that has blowed up. if you afraid of people finding out get a gunsmith to do it and pay cash for it
Like · Reply · September 30 at 12:36am

2 Replies

Michael A. Brodine All that legal B.S. Is just what it is, I've owned up to 6 model 700 at one time and still own 2. I have one with a trigger block and one without. I consider both safe because I'm smart enough to know what I purchased, understand the the rifle including triggers and practice "don't point a gun at something you don't want to shoot." I feel sorry for Remington, there are others.
Like · Reply · October 12 at 10:54am

Jack Gilbert I wouldn't have a Remington rifle if I had room for Texas. I have my stepfather's pre-64 model 70 in 35 Whelen and my pre-64 Featherweight in 30-06. The other centerfire is a .270 based on a 1909 Argentine Mauser action. The only Remington I own is my Dad's 870 Wingmaster and it is old--made in the 1950s and it's a dandy.
Like · Reply · October 14 at 12:45pm

Allen Buher If you have a problem why not go to Remington directly or sue them yourselves if they don't fix the problem? When classaction is involved this antigunners looking to shut the company down.... eat SHIT ASSHOLES!

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Chat (17)

Like · Reply · October 18 at 4:34pm

Doug Brownlee I had a Remington 700 it was a new 7mm mag the chamber looked like it was machined out of cast iron and I could not get the groups under 2inches at 100 yds. After two weeks I took it back to the store I thought it from and told them I would like to trad... See More

Liked · Message · Saved · More

Like · Reply · October 10 at 8:20pm

D. M. Watson ...this is a real issue. Releasing the safety on some of those guns will cause the striker to fire. There have been deaths attributed to this unfortunate circumstance.

Like · Reply · September 30 at 4:08pm · Edited

Martin Henriks Excuse me, but what can't people understand about "Be Careful", whether is guns, ladders, cigarettes or drugs. We are training a nation of blamers instead of accepters of responsibility. We are doomed, and already declining.

Like · Reply · October 20 at 12:32am

Lee Cerny Had one. Sold it at an auction. I thought it was dangerous because every time you took the safety off had you pulled the trigger it would fire. Almost shot my friend that way. Dump that gun

Like · Reply · October 18 at 11:06pm · Edited

Richard Schnitzler I am Ricks wife ,My husband had a Remington that miss fired ,safety failed , shot him in the foot , he was luck to keep his foot , attorneys that represents Remington did NOTHING , we sent his gun off for "their guys" to have it inspected and we were n... See More

Like · Reply · October 23 at 1:52pm · Edited

Ralph Shaw Check your serial number ; if it qualifies as needing repair then get it repaired or replaced !! REMEMBER THIS : GUNS DO NOT COME WITH AN ERASURE;
If you accidentally shoot some body with a high powered rifle
You can't un do it !!!!!.........,

Like · Reply · 1 · September 30 at 10:35am

Rob Sherwood Best way to check it,have an attorney hold the open end of the barrel while looking down it. Bolt a round in place. If it didn't discharge it's fine.

Like · Reply · 2 · October 23 at 10:51am

George Parsons if remington had fixed the problem....no the dumbasses wanted to point the finger of guilt on the user....just fix the damn problem. yes it will cost money but you have ruined the reputation of a damn fine rifle.

Like · Reply · 1 · October 21 at 11:08pm

1 Reply

Bill Bares I never had a problem with mine but my sister has I just thought it was just her I'll have to check this out if they are willing to fix it for free that's great

Like · Reply · October 24 at 9:20pm

John Grossen it's about time they recognized the issue... nearly had a couple of guys shot at deer camp when a guy unloaded his 700. I won't take part in a lawsuit either, just fix the problem.

Like · Reply · October 21 at 2:30pm

1 Reply

Kevin Grantier WOW, I own a .338, .300, & a .7mm RUM, I also have a the .308, .223, .204 in the VTR module and I have not one problem with any of my weapons. I have had the triggers worked on on by the .338, .300 & 7mm and had the triggers worked on them due to my partial severed trigger finger but have NEVER had any type of miss fire of any type.

Like · Reply · October 13 at 4:26am

Kent Blodgett I use to own 2 model 700 ADL CUSTOM KS, A 280 rem. And a 7km mag. Both custom shop guns. Half the time I closed the bolt they fired without touching the trigger. When I was hunting I was shooting at a deer and the bolt does not lock with the safety on. And the gun did not fire. Deer got away and it was trophy buck. I will never own a Remmington again. What a dangerous piece of junk. These were expensive rifles.

Like · Reply · October 19 at 1:10am

2 Replies

Doug Fiely Its bullshit. Remington put out a bad product and they need your gun for 12 weeks te remedy their mistake. I am not happy with Remington at all over this.

Like · Reply · 1 · October 23 at 7:48pm

Richard McAllister Mike McAllister Remington paid to have it rebuilt years ago I sent it to a rebuilder in Ohio the job was well done but you may still be eligible.

Like · Reply · October 3 at 5:19pm

Rick Hutson My Remington 700 will fire with the safety on when you close the bolt !!! It is in the same serial number range as the ones that are affected, the other one I own have a timney trigger without the problems !

Like · Reply · October 12 at 10:11pm

2 Replies

Chat (17)

Sherry Dwaine Griffith Dumb operators. Set too light or never clean them causing the parts to gum up, then the safety fails to do its job. Used the Remington 700 for 45 years and if there were trigger problems it was my fault.
Like · Reply · 1 · October 10 at 6:36pm

2 Replies

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Tom White They are just trying to find out who had one, then if Hillary makes it she is going to take them all away from us. Then we are doomed!
Like · Reply · 2 · October 3 at 5:09pm

1 Reply

Mark Mackey Clean the trigger group good with a good cleaning agent. Do not at any time oil the trigger group. Happy shooting. 6 to 9 moth turn around for manufacture repair....
Like · Reply · October 21 at 6:52pm

Billy TruMan When the Ambulance chasers are put out of business, this BS will also stop. Some claims may be legitimate but should also be limited to repairs only.
Like · Reply · October 20 at 7:42am

Dean Smith I put a muz brake on it because I broke my shoulder also have the 300 altry both have brakes the 7 mm is the one with the bad trigger I had williams do both of them both are very good guns the 300 A is very wicked thanks for the info
Like · Reply · October 24 at 4:05pm

Poppa Kil It's about damn time!!! That trigger mechanism has been defective for decades! That one reason is why I own a Winchester, but no Remingtons.
Like · Reply · October 1 at 5:07am

Bill Difilippantonio Sr. This was around almost a year ago or longer. I checked mine out right away on the web site and was not on the list. I have fired it many times since and not one problem.
Like · Reply · October 18 at 4:39pm

1 Reply

Michael Groves It's about time that they recalled there problem. To bad people had to die before they got it together. Shame on you Remington. I will never buy anything you make again!
Like · Reply · October 24 at 1:41pm

2 Replies

Matt Brainard I've never had a problem with Remington once idk how they make them now but back in the day they where the best made guns u could buy
Like · Reply · 1 · October 14 at 9:10am

Ronald Baney I have a 270, 243 and a present bought 308. Never any trouble with any of them. Best Damn production gun on the market oldest gun maker in America. And what about your serial no. My 243 has a Timney adjustable trigger. And true anything mechanical can fail after time. So your claim is nothing to get your drawers in a twist. Enjoy your time shooting.
Like · Reply · October 15 at 4:17pm

Betty Yeakle Don,t have one so not at all. I know it knocked me on my rear when I was three. It was my brother,s and he said it wouldn't,t hurt me. He lied.
Like · Reply · October 18 at 4:26pm

Larry Mohn I have an older 308 Winchester rifle and a Remington 700 mm magnum both excellent guns but I've heard these newer 700 snipers will go off without touching trigger cheaply built these days buy older guns the barrels were made from quality steel tempered right and also made in the good old U S A 😜
Like · Reply · 1 · October 1 at 9:22pm

Dee Buck After shooting a hole in the floor board of my pick up and a day later having the 700 go off before I was ready to shoot I took the gun to a gunsmith and he repaired it as it had a defect.
Like · Reply · October 19 at 8:04am

Mark Lucas Worked with them today, after learning the terms and conditions. The shipping and delay time just to get another cheap trigger I ain't going to do it!

The Powder metal trigger parts are not of a very good quality.. some my say unsafe!... See More
Like · Reply · October 21 at 8:02pm

2 Replies

Dave Tipton Didn't Feistein say that she wanted to shorten the bolt levers? That looks like an "Assault Bolt Lever" to me.
Like · Reply · October 12 at 8:43am · Edited

1 Reply

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Chat (17)

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March 14 ·

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Patrick Zimmerman II hmm. i still want to know who they cought in the woods dressed in all black that the police rook
Like · Reply · May 7 at 10:10pm

Angel Morales Sandy and the Florida gay club shooting. Where even a patron yelled as he had escaped why weren't the cops moving in. Sheeple galore eating it up.
Like · Reply · October 4 at 5:34am · Edited

Write a comment...

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Chat (17)

Remington Firearms Class Action Settlement

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Bret Somers Firearms should NEVER be pointed at something you wouldn't mind putting a hole in. Ever. If it malfunctions, it should be sent to the manufacturer for repair. Frivolous lawsuits, pushed by ambulance chasing attorney's are killing our manufacturing, jobs, and our country.
Like · Reply · 8 · October 19 at 9:11am

Anthony Olsen How about instead of being sue happy you send your rifle in for the repair, get your 40% off coupon for the Remington store get your rifle back and be happy.... stupid ass people. Or upgrade to a Jewell or timney trigger. No need to sue anyone that's the problem with everyone now!
Like · Reply · 8 · October 23 at 2:34pm

2 Replies

Geno Clemans Remington....I have many of your 700's...and Several Model 7's.
They all are Excellent Rifles and the Triggers..all work great....Including several with the X..Mark Pro...None have ever failed me....Here in the States...or Namibia Africa.
Thank you for making Excellent Firearms...especially the Model 700 and Model 7.....
Like · Reply · 3 · September 29 at 5:14am

James West This makes me angry. As a gunsmith I have had a chance to look at many of these "defective" mechanisms. My findings are that most of the time, people had tried to lighten their own triggers, not understanding the full extent of the process. Others I ha... See More
Like · Reply · 7 · October 14 at 10:39am

1 Reply

Mitchell Hollis I've been a gunsmith for over 25 years, and I've serviced hundreds of model 700 rifles, ranging from 1962 to current production.
And the only unsafe rifles, and pistols I've seen are the ones owned by people that do things with their weapons they shouldn't,and not doing the things they should. End of story
Like · Reply · 6 · September 29 at 10:53pm

Rob Blanker My first high powered rifle was back in 1990 when I purchased a Remington 700 ADL in 30-06, it has been an outstanding accurate rifle. I have

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Bryan Greer
October 16 at 1:04pm

This is just another way for the lawyers to make millions off the backs of poor dumb slobs! You will get nothing from this!!

Like · Comment

Jordan Paul
October 14 at 10:02am

This is ridiculous.

Like · Comment

Franklin Hughes
April 17 at 1:13pm

Sandy hook was faked. No one died. I hope you all know that you're going to burn in hell for your part in this lie.

Like · Comment

PEOPLE ALSO LIKE

Freedom15 Lifestyle 2A
Sports League
Like

hat (12)

also bought a new Remington 700 BDL SS, in 30-06, another fantastic accurate rifle.
Like · Reply · 5 · October 16 at 12:18pm

Michael Sanderson I wonder how many people read their manufacturer's owners/operators manual. Sad, people will buy a deadly weapon, and don't even bother to read the supplied literature to ensure safe operation of their newly purchased firearm.
Like · Reply · 2 · October 2 at 3:12am

4 Replies

Brian Oberle The trigger recall is not anything new. I replaced mine with a Timney a couple years ago. It's...magic. And no need to ship my rifle off and let whoever fiddle with it.
Like · Reply · 5 · September 30 at 10:24pm

1 Reply

Brian Carter F off!
The only thing wrong was the idiots who pointed their rifles in a unsafe direction.
So many million R700 rifles in circulation and you are worried about the fringe owner's rifles in various states of questionable maintenance or bubba gunsmith... See More
Like · Reply · 10 · September 28 at 9:59pm · Edited

2 Replies

Richard Schnitzler I am on my husband's cell .My husband had a Remington the safety failed him and he was shot in the foot ! He had every bone in his foot broke and the side blew out plus the huge hole that a lemon could have got in ! Thank God he healed ok , his foot of... See More
Like · Reply · 3 · October 3 at 10:53pm · Edited

3 Replies

Bryan Almas Well I'll leave my 2 cents worth here as my family has been shooting remington 700 models sence they came out adl bdl sps all models we have purchased. Anywhere from 223 up to the 300 wm. All have been flawless out of the box until this year... I purch... See More
Like · Reply · 2 · October 9 at 6:48pm

3 Replies

Mitchell Hollis Total BS.....
There is nothing wrong with the Walker trigger. Except the person operating it. There is only 2 possible ways for this to happen. If you fool around with the adjustment screws,without knowing what your doing, your asking for trouble, or ... See More
Like · Reply · 3 · September 29 at 10:49pm · Edited

Mark R Unruh This wepon is a killer I had one if you took you're safty off the gun would go off .I had this happen to me twice in the same day .that gun was sold to a gunsmith for a rugar .I have always owned RUGAR riffels and have never had a problem .now I have 6 rugars .
Like · Reply · October 16 at 4:29pm

4 Replies

Kenneth Byrne I have worked on these rifles for 20 years the only problem I have ever saw is when someone that thinks they know how to set a 18 oz trigger mess with them. Never had any in my whole family ever have problems with Remington rifles
Like · Reply · 1 · October 14 at 3:25pm

Clinton Morrill It's a set up, I have 9 of that model in all calibers and never had a problem with thousands of rounds. Their finding out where guns are and who has them, wise up people.
Like · Reply · 3 · October 21 at 10:30pm

2 Replies

Nick Haulotte The old guns are built like tanks and fiction for years and years and years. U can pass them down from great grandfather to father to son to his kids and then his kids kids and maybe there kids before it's time to be replaced . Same with ammo. Ammo doe... See More
Like · Reply · 1 · October 18 at 8:08pm

2 Replies

Ron Bennett Agreed James, they can go off on their own. I just bought a Howa-Hoag in 30-06 with some good glass, the last 700 I own is for sale, I dont trust that rifle or even the new ones they make. I've owned at least 20 rifles and shotguns in their name, I hav... See More
Like · Reply · October 15 at 10:05pm

John Richards This can be directly attributed to a CEO (Tom MILNER) who was informed many years ago by the gentleman who designed the 700 that he discovered a flaw in the firing mechanism,and that it should be recalled which Mr MILNER did not need,only after several... See More
Like · Reply · October 17 at 1:25pm

Liked · Message · Saved · More

Hunt Omega Product/Service — Like

MiliTactical Company — Like

English (US) · Español · Português (Brasil) · Français (France) · Deutsch

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Chat (12)

Ron Bennett I had 3 different discharges with a Md. 700 that was made in the 70's. It was a 22-250 w/ a bull barl. One discharge was a near accident with a good friend. I reported it, and sold it, and party was aware. I have a Md 700 still in 30-06, I worry alot about all the time. For you non-believers,,,Trust Me, it happens, I have no reason to lie, and dont want anyone hurt.

Liked | Message | Saved | More

Like · Reply · 1 · October 15 at 9:52pm

Ron Bennett Let me tell you something Robert A., I have no reason to lie to you, and I always loved the Md 700. My 700 in 22-250 misfired 3 times on me, and one was a close call. Truth! I just sold my last one, moving on to others I can trust.

Like · Reply · October 20 at 4:40pm

Allen Clemons Mine qualifies, but they wanted me to send in the whole gun over a trigger. Would not just trade triggers. So I bought a jewel and use it. I will trade them triggers anytime but they aren't getting me to completely tear my gun down.

Like · Reply · October 11 at 1:47pm

Mark Smith I had a model 700 7mm
Mag that fired a round when I lifted the bolt to eject a cartridge.
Left hand on the fore grip, right hand on the bolt. Picked the bolt up and boom.... See More

Like · Reply · 1 · October 18 at 10:44pm · Edited

7 Replies

Randy Lobdell I won't buy Remington either here,s why I live less than 35 miles from the plant when the nysafeact passed rem said they would move instead they stayed cause they took over a million dollars from Cuomo to stay Remington stabbed every 2nd amendment supporters right in the back

Like · Reply · October 11 at 9:58pm

1 Reply

Clay Mounts I shot through the bottom of my tree stand cause I flipped the frigging safety off and about blew my foot off and the bad part is no body would believe until this article came out

Like · Reply · 1 · October 11 at 2:41am

Robert Fabela Part of the reason I will never buy a Remington firearm ever, from their Remington 700s having KNOWN issues with triggers going off with bolt handling, to the sloppy manufacturing of Remington 870 express's with bad shell extraction, to the jamomatic w... See More

Like · Reply · October 16 at 9:12am

Tony Mcknight i have 2 remington rifles in question and they offered me a $12.50 coupon for remington items. i still cant use one of the guns.no replacement of trigger

Like · Reply · October 17 at 12:19am · Edited

2 Replies

Davy Hulett I own the Remington model 700 30 06 there is a recall on the faulty trigger however they say mine isn't under the recall . It could fire on its own at any time and has done it twice and it just sits in my gun cabinet b/c I'm scared of the gun .

Like · Reply · October 24 at 7:36pm

1 Reply

Hunter Brotherton I won't own a Remington because of all the people the gun hurt or killed and Remington still claimed the gun was safe and wouldnt recall them without being forced to, its not a trigger problem it's when you flip on/off the safty or open the bolt it fires the rifle.

Like · Reply · October 11 at 5:39am

1 Reply

Michael Kirkland Not happening I will keep my wore out ole weapons. The new Remington workers make some junk I would not even shoot. Just my thoughts from and ole machinists .

Like · Reply · 2 · October 3 at 8:48am

Tom Rich I don't know what's going on with them. Their QC as of late is not very good. Since they took over Marlin now Marlin is almost junk....buy anything new from them you better check it over really well...

Like · Reply · September 28 at 10:57pm

Daniel Holder I don't really want to send mine back but it has gone off when I shut the the witch is not a good thing. I wonder if I just buy the trigger I want in it and be done with it cause I like my trigger pull I have on it now

Like · Reply · October 1 at 3:09pm

1 Reply

Bill Millen I have a Remington 700. It was part of the recall. They sent me a box and paid the shipping to them. I had my rifle back in 2 weeks.

Like · Reply · 2 · October 9 at 11:30pm

Tommy Abella Alex Abella you should check your serial number could be entitled to some stuff from Remington even though we replaced your trigger.

Chat (12)

Like · Reply · October 18 at 4:42pm

Roger Backus I had a model 70 win discharge when taking the safety of almost shot my buddy. I only shoot savages now.
Like · Reply · 1 · October 16 at 10:17am · Edited

Liked | Message | Saved | More

Richard Taracka This is an old lawsuit that involved the Walker Trigger. My Remington's all have Walker triggers and they work great. To be honest I think it's a bunch of BS and Remington just wants to get this issue behind them.
Like · Reply · 1 · September 30 at 2:41pm

Joe Allsup Only a Remington rifle that is manufactured by Georg Sorros the owner of Remington would put you in a lawsuit ! Be a real owner and purchase a Sako or Browning .
Like · Reply · October 15 at 11:26pm

Bob Cary This gun looks like the bolt comes down right next to the trigger. So if you bump it the gun could fire, before you put the safety on. NOT A SAFE GUN TO BUY.
Like · Reply · October 24 at 2:35pm

2 Replies

Ale Tucker Wish I still had the Remington rifle I got shot with and put me in a wheelchair...so I could check...that was 36 years ago...the gun had a faulty safety....
Like · Reply · October 14 at 11:53am

Bill Lundy I don't buy Remington rifles. Their shotguns are fine.I own several; their rifles I do not own.Too many flaws and problems from way back.Just my opinion
Like · Reply · October 9 at 6:28pm

Charles Hajko i no longer own a remington...i had my beautiful remington mod 700 classic in 270 caliber stolen from me in divorce court by a Left Wing Liberal Judge & lawyer.
Like · Reply · October 21 at 11:43pm · Edited

James Adams Doesnt matter what kind of gun caused problems. Its the dumb people who leave chambers loaded And have no respect for it then end up getting killed.
Like · Reply · October 10 at 7:25pm

1 Reply

Scott L. Service Been shooting and hunting with Remington rifles for 30 years--never had any problems with the trigger mechanism on any of them.
Like · Reply · October 15 at 3:17pm

2 Replies

Danny Harrison I sent mine back last year as soon as the recall started.
It took about six weeks. In plenty of time for gun season.
It doesn't matter what Caliber, just go on line.
Like · Reply · September 30 at 6:07pm

Bill Wright My Remington 700 is a tack driver. Never gave me an issue. Ever....
But has the bad trigger. Which I love. Hope the upgrade is as crisp.
Like · Reply · September 30 at 7:28pm · Edited

2 Replies

Jon Hoffer Never owned one of those pieces of crap but wish I New the number of the one my buddy had over his shoulder and damned near blew my head off! On the sling, never touched it, BANG!
Like · Reply · October 16 at 3:35am

John Frenzel I bought a model 700--didn't like the trigger-the cocking piece-and the stock--so it carries a Shilen trigger- a Bell stock, and a Gentry cocking piece--shoots great- and I didn't have to pay some lawyer to sue some body-
Like · Reply · 1 · October 11 at 12:52pm

James Wewerka Empty your gun...rack bolt to fire weapon....hold two feet off the ground and drop it on carpet.."the butt of it"...if it fires"clicks"...you got a bad one....I still don't believe it though...I have one and it's fine. ....keeping it...don't want their money...probably user error anyway
Like · Reply · 1 · October 23 at 11:34pm

Jason Thomas No thanks I love my remington 700 trigger and am not a sue happy pussy!
Like · Reply · 11 · September 28 at 8:49pm

3 Replies

John Richards Remember THIS!! THE ASSWIPE currently at the helm and in the process of destroying CABELAS,is also the same ASSWIPE that almost destroyed REMINGTON ARMS,another REAL AMERICAN CORPORATION.
Like · Reply · 1 · October 22 at 6:56pm

1 Reply

Chat (12)

Rusty Lacy It's just a way for the government to know who has what gun and for them.to get the serial number for that gun.
Like · Reply · 7 · September 30 at 5:39pm

1 Reply

Liked | Message | Saved | More

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50 of 582

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Remington Firearms Class Action Settlement updated their profile picture.
March 14 ·

Remington
Firearms
Class Action
Settlement

Like | Comment | Share

7

Chronological

1 share

View 1 more comment

Patrick Zimmerman II hmm. i still want to know who they cought in the woods dressed in all black that the police rook
Like · Reply · May 7 at 10:10pm

Angel Morales Sandy and the Florida gay club shooting. Where even a patron yelled as he had escaped why weren't the cops moving in. Sheeple galore eating it up.
Like · Reply · October 4 at 5:34am · Edited

Write a comment...

Chat (12)

EXHIBIT D

Pollard v. Remington
MISSING INFORMATION

The following data is known or knowable to the settling parties and the notice administrators. This evidence and data would bear upon the efficacy of the notice and claims process and further inform the Court and objections regarding notice and claims process deficiencies. This list is subject to modification based on any further information provided by the settling parties.

Data Sought	***Explanation***
Depositions	Depositions of Mr. Weisbrot and Mr. Garretson would elicit explanations for numerous statements that appear false or misleading and regarding numerous omissions. The topics include those highlighted in the *Hilsee Amicus Letter* including why warranty card data was not used for direct mail during original notice, why emails were sent in lieu of available physical mailings during supplemental notice, why claim forms were not sent with notices, audience reach calculation methodology, why notices were written and designed as issued, assertions regarding radio and Facebook efficacy, and claims process planning and statistical reporting, including about omissions in sworn declarations.
The number of claim forms submitted	How many claim forms have been submitted to date; how many are complete; how many are partially complete; what cure process has been undertaken to correct claims that may be deficient but not invalid
The source of the claim forms submitted	How many claim forms were submitted, broken down by the various means (mailed pursuant to receiving a postcard, mailed by someone who did not receive a postcard, submitted online by someone who received an email, submitted online upon click from internet banner on Facebook, submitted online upon click from other internet banners, other).
The timing of the claim form submissions	The number of claims submitted each day since the original notice effort, regardless of validity.
The validity of claim submissions	How many submitted claim forms are invalid, broken down by the reason for invalidity (wrong serial number, missing information).

Data Sought	***Explanation***
All metrics regarding visits to the settlement website	The number of visitors, unique visitors, length of stay, source of traffic and pages visited broken down by every page of the website, including how many unique visitors opened and read a notice; *i.e.*, all statistics reported by Google Analytics on the www.remingtonfirearmsclassactionsettlement.com website. The settlement website employs Google Analytics as evidenced by the website coding.
The timing of visits to the settlement website	The Google Analytics report provides the website traffic statistics over time. *See e.g.,* http://www.gsqi.com/imd/?p=1688. The data should be shown by day and week and month which Google Analytics allows.
Data on mailings sent and results	Copies of the physical mailings as sent; the description and source of address-updating used prior to re-mailing; the dates on which mailings were sent; the number of mailings returned as undeliverable; the number of mailings re-mailed to a better address.
Data regarding warranty card records	The number of warranty card records for each model included in the settlement; the number of such records for which a physical mailing address is available; the number of such records for which an email address is available; the number of such records for which there is ONLY an email address and NO physical mailing address; the number of warranty cards for which no physical mailing address and no email address exists. Note: in *Garza v. Sporting Goods*, court records including Remington counsel's pleadings reflect that 263,000 physical mailing addresses were available from warranty cards.
Data regarding repair records	The number of repair records (persons who contacted Remington for repairs of specific guns) for each model included in the settlement; the number of such records for which a physical mailing address is available; the number of such records for which an email address is available; the number of such records for which there is ONLY an email address and NO physical mailing address; the number of repair records for which a name but no physical mailing address and no email address exists.

Data Sought	***Explanation***
Data regarding Service Center Records	The number of service center call records for each model included in the settlement; the number of such records for which a physical mailing address is available; the number of such records for which an email address is available; the number of such records for which there is ONLY an email address and NO physical mailing address; the number of service center records for which a name but no physical mailing address and no email address exists.
Data on emails sent and results	Copies of the emails as sent; the number of emails returned as undeliverable; a description of the treatment of and actions taken because of returned emails; the number of emails where a physical mailing could have been sent; the number of emails sent but not opened; a description of the treatment and actions taken because of emails sent but not opened.
Documentation for Facebook advertising	Insertion orders for Facebook showing exactly how supplemental advertising was purchased, the budget, how many impressions were sought and where, and against which audience. The post-buy documentation showing exactly what was achieved including all metrics, how many impressions were obtained, how the parties know the viewers were class members.
Detailed metrics on Facebook response	All reports from Facebook on the results of the test campaigns and the approved supplemental campaign, including how many "clicks," how many "impressions," and how many people were "reached," including the definitions of those terms as used.
Internet banner purchase statistics	The insertion orders (media buy orders) for the internet banner impressions purchased during the original "due process" notice program; the budget spent broken down by network, the list of all URLs where the banners appeared and when, and showing how many impressions appeared on which URLs and when.
Internet banner response data	All reports from the internet banner networks showing the number of clicks through to the settlement website from the internet ad banners; all report documentation available from "Double Verify" or any other ad fraud and banner visibility-reporting vendor; all viewability reports from any vendor or network; all other reports available from any vendor involved in placement of the internet banner ads.

Data Sought	***Explanation***
Internet banner notice	Copies of the internet banner(s) used during the original notice program.
Radio advertising purchase information	All insertion orders for radio advertising including the expenditures by network and market; Reports from all networks and vendors involved in airing radio advertising; All data showing which stations, city and market, aired the notices and what times of day such spots aired; how many target rating points such spots delivered and all available data from the networks as to the net reach achieved, by market.
Phone call data and timing	The number of phone calls received each day since the start of the notice programs; the average length of each call; the number of callers that listened to each option; the number of calls that were transferred to a live operator; how many claim forms were requested by those who called; and how many claim forms were mailed to those who called.
Call Center Scripting	Copies of all documents provided to operators who answered calls for the settlement claims administrator and for Remington's own call center, including any answers to frequently asked questions.
Dealer Data	The number of dealers and gunsmiths across the U.S. with which Remington has had contact with about the settlement and during its sales and repair efforts outside of the settlement; the address and contact information for each such vendor.
Dealer Communication	Copies of all communications with dealers about the settlement including about posters being issued; any proof of performance and placement of such notices including regarding visibility and location.

EXHIBIT E

ATTENTION

OWNERS OF REMINGTON 12-GA MODEL 870, 1100, 11-87, 3200 AND SPORTSMAN 58, 12-A, 12-P SHOTGUNS

Owners of Remington 12-gauge Model 870, 1100, 11-87, 3200 and Sportsman 58 and Sportsman 12-A and 12-P shotguns manufactured between 1960 and June 1995 (the "Shotguns") who have not previously excluded themselves from the settlement are entitled to receive a payment ("Settlement Check"), as part of the resolution of the class action lawsuit in Garza v. Sporting Goods Properties, Inc., Civ. No. SA-93-CA-1082 (W.D.Tex.). The lawsuit was brought against Remington and DuPont, the former parent company of Remington, by several owners of Shotguns (the "Class Plaintiffs") on behalf of all such owners. The Class Plaintiffs claimed that the barrel steel formerly used in the Shotguns was not strong enough and the barrels sometimes burst in normal use, causing damage to the gun and, in some cases, serious bodily injury. Remington and DuPont denied—and continue to deny—such claims. They assert that (1) the steel used was appropriate for use in Shotguns; (2) barrel bursts are extremely rare and occur only when improper ammunition, including improperly loaded ammunition generating much greater than normal firing pressure, is used, or when the barrels are obstructed; and (3) the Remington owners' manual and the accompanying firearms safety booklet gives full and adequate warning of such hazards.

There has been no class action trial regarding these matters. The Class Plaintiffs have not proven any of their claims, and Remington and DuPont have not proven any of their defenses. Instead of engaging in long and costly litigation, the parties have agreed to a settlement, which the United States District Court for the Western District of Texas (in San Antonio) has approved as fair, reasonable and adequate.

Under the terms of that settlement, Remington has begun to make, and will continue to make, barrels for Model 870, 1100, and 11-87 12-gauge shotguns from a different type of steel, which can withstand higher pressures. Also as part of the Settlement, eligible shotgun owners are entitled to receive shares of a cash settlement fund, accompanied by a safety brochure. After payment of notice and administration costs, compensation for Class Plaintiffs, and class counsel's fees and expenses as awarded by the Court, the amount available for distribution as Settlement Checks to owners of the Shotguns is $17.125 million.

To obtain a share of this fund, YOU MUST:

PUT YOUR VERIFIED SIGNATURE, ADDRESS, SOCIAL SECURITY NUMBER, AND TELEPHONE NUMBER ON THE BOTTOM OF THIS FORM ALONG WITH THE SERIAL NUMBERS OF ANY 12-GAUGE REMINGTON MODEL 870, 1100, 11-87, 3200 AND SPORTSMAN 58, OR SPORTSMAN 12-A OR 12-P SHOTGUNS YOU OWN. THE FORM MUST BE POSTMARKED NO LATER THAN SEPTEMBER 30, 1996, AND SENT TO THE ADDRESS BELOW.

AS A CONDITION OF CASHING YOUR SETTLEMENT PAYMENT CHECK, YOU WILL BE REQUIRED TO READ, AND TO AGREE THAT YOU WILL FOLLOW THE INSTRUCTIONS CONTAINED IN, THE SAFETY BROCHURE WHICH WILL BE SENT WITH YOUR CHECK. The amount each participating class member is to receive will be based on the number, models and manufacturing dates of his or her Shotgun(s) and the total number of valid claims filed. It is anticipated that Settlement Checks will be sent to eligible owners by January 15, 1997.

EXCLUSIONS: The following are not eligible to receive, or serve as the basis of, Settlement Checks:

a) Employees of Remington and DuPont, except as to Shotguns owned by them for personal use;

b) Resellers and distributors of Remington and DuPont (except as to Shotguns owned by them for personal use, rather than for resale or business promotional purposes); and

c) Recently manufactured Remington 12-gauge shotguns with these or higher serial numbers: Model 870—B457166M; Model 1100—RO64388V; and Model 11—87—PC 495255.

IMPORTANT NOTE: If your form is not postmarked on or before September 30, 1996, you will not receive a share of the settlement funds, but **you will remain bound by the terms of the settlement,** which bars claims (except bodily injury claims) relating to Shotguns manufactured prior to June 1995.

VERIFIED CLAIM FOR SETTLEMENT PAYMENT

I am the owner of the Remington 12-gauge Model 870, 1100, 11-87, 3200, or Sportsman 58, Sportsman 12-A or 12-P shotgun(s) listed below, am not excluded (as described in this notice) from receiving a Settlement Check for any of those Shotguns, and did not file a notice of exclusion in Garza v. Sporting Goods Properties, Inc. I understand that as a condition of cashing my Settlement Check, I will be required to read and agree to follow the instructions in the shotgun safety brochure which will be sent with my check.

MODEL ______________________ SERIAL # ______________________

MODEL ______________________ SERIAL # ______________________

☐ Check here if a list of additional shotgun models and serial numbers is attached

NAME (PLEASE PRINT) ______________________ SOCIAL SECURITY NO. OR EIN ___ ___ ___ – ___ ___ – ___ ___ ___ ___

ADDRESS ______________________ CITY ______________ STATE ______ ZIP ______

(   )   –

TELEPHONE

I declare, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct. Dated on ______________________, 1996.

____

SIGNATURE

MAIL THIS FORM TO:

Shotgun Settlement
P.O. Box 1516
Faribault, MN 55021-1516

Your claim must be postmarked no later than September 30, 1996.

(This coupon may be photocopied for use by other claimants)

EXHIBIT F

Ensure high-quality, cost-effective notice and settlement administration

Class Action Settlement Administration For Dummies, KCC Special Edition, is packed with details about the administration process and how your administrator makes the process run smoothly. This book provides you with an overview of class action settlement administration and legal notification. You'll learn about the mechanics of settlement administration, how to choose a claims administrator, what makes a notice program effective, and how to keep administration costs in line, among other topics.

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- ***Reduce costs* — *find out how working with experts saves time and money***
- ***Comply with court requirements* — *work with experienced professionals to ensure court approval***

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- **Reduce costs**
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KCC creates a higher standard for its industry by focusing on clients' needs from the perspective of professionals. KCC provides professional-level client service, industry expertise, and innovative technology solutions to support clients' critical business processes and transactions. As a result, KCC has earned national and industry recognition for its services, leadership, innovative business model, and company growth.

With experience administering over 1,500 settlements, KCC's team knows first-hand the intricacies of class action settlement administration. Its domestic infrastructure includes a 900-seat call center and document production capabilities that handle hundreds of millions of documents annually. In addition, KCC's disbursement services team distributes more than $500 billion annually.

This book is proudly written by the KCC Class Action Services Team:

- Dee Christopher
- Robert P. DeWitte
- Drake Foster
- Gina Intrepido-Bowden
- Patrick Ivie
- Patrick Passarella
- Carla Peak
- Nancy Timpanaro
- Steven Weisbrot

To learn more about KCC Class Action Services or to request additional copies of this book, call (866) 381-9100 or e-mail classaction@kccllc.com. You can also call Patrick Ivie, Executive Vice President KCC Class Action Services, at (310) 776-7385 or e-mail at pivie@kccllc.com.

Class Action Settlement Administration FOR DUMMIES

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KCC Special Edition

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FOR DUMMIES

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E-mail notices tend to generate a lower claims rate than direct-mail notices. But not all direct-mail notices are created equal — many types of notice and claim form designs exist, and they all tend to have different claims rates. The claims rates of the varying types of notice and claim form designs tend to be most impacted by their distribution methods, their ability to be easily understood by recipients, and the ease with which class members can file the necessary forms and take any required action.

The following are the most common types of e-mail and direct-mail notices and claim forms. They're listed in order of least to most likely to increase the number of claims filed in a settlement.

- E-mail notice
- Single postcard summary notice
- Full notice and claim form
- Full notice and claim form with return envelope
- Full notice and claim form with postage-paid return envelope
- Double postcard notice with tear-away claim form
- Double postcard notice and postage-prepaid tear-away claim form

When thinking about the potential claims rate, be sure to think about factors other than just the amount of the monetary award. Your claims administrator should review the settlement details and identify the major factors that impact the claims rate in your settlement.

For example, in an employment context, consider whether a particular class member is a current, past, or seasonal employee. In the consumer context, consider whether the product was a luxury item with a high price tag or whether the lawsuit involved a high-profile product, such as a common, everyday food item. Was there a safety hazard? Was this a well-publicized settlement?

Calculating Claims Rates

While claims rates are an important factor in settlement planning, be sure to focus not only on the individuals making the claims but also on the percentage of the class fund that those claims represent. It'll be pretty straightforward to allocate the class member awards if the settlement is set up on a per capita basis with a set value per claimant or a simple pro rata share with a value that varies in proportion to an easily calculated factor.

The calculation process becomes a lot more complex when the allocations vary based on considerations such as the length of time a customer received a service or the amount of time an employee worked in a particular position. Talk to your claims administrator about the complexity of your settlement, and be sure you understand what the class member allocations are based on.

EXHIBIT G

NRA NATIONAL RIFLE ASSOCIATION 1-877-NRA-2000

Updated: May 19, 2015

Privacy

NRA realizes how important privacy is to our membership. Therefore, we have adopted the following policy to advise you of your choices regarding the use of your personal information online. This policy describes what types of information we gather about you, how we use it, under what circumstances we disclose it to third parties, and how you can update it.

Information Collection

We gather certain broad information about website use including the number of unique visitors, the frequency with which they visit, and the programs and services preferred. We look at the data in summary form, rather than on an individual basis. We gather this information so we can learn how many people visit NRA sites, which pages are the most and least viewed, and which websites are referring visitors to our sites. We use this information to help us in restructuring sites to meet our members' needs. NRA sites do not respond to "Do Not Track" signals.

Most NRA sites and services are intended for general audiences and do not knowingly collect any personal information from children under 13 years of age. We are committed to complying fully with the Children's Online Privacy Protection Act of 1998. Of course, the NRA also encourages parents to discuss privacy issues with their children.

We compile lists for communications and marketing purposes. We will provide that information to NRA affinity partners who we believe provide goods and/or services that might be useful to NRA members. Contracts with these companies require them to keep the member information strictly confidential and prohibit them from using it for any other purpose. You may ask us to remove you from the lists by: (1) emailing from our Contact Us page; (2) calling us at 1-800-672-3888; or (3) writing to us at National Rifle Association of America, 11250 Waples Mill Road; Fairfax, VA 22030. We do not provide member information to telemarketers, mailing list brokers, or other companies that are not offering NRA-endorsed services or benefits. Third parties do not collect personally identifiable information about the online activities of individuals who visit NRA sites.

Cookies

The NRA online network utilizes a standard technology called a "cookie" to collect information about how our sites are used. Cookies are small strings of text stored on your computer's hard drive by a Web server. For example, session cookies identify your computer during a particular session to track the items you have placed in your "shopping cart" during a visit to our online stores.

The NRA uses cookies in conjunction with third parties (such as Facebook and Google) to provide measurement on marketing campaigns and send targeted advertisements to internet users. The NRA does not use any personally identifiable information when targeting users for advertisements. Using cookies allows personally identifiable information to remain undisclosed.

If you would like to opt-out of cookie collection, you can disable and or block third-party cookies in the settings section of your internet browser. If you would like to choose which third parties can use cookies on your internet browser and or see a list of the third parties which are using cookies on your internet browser, you can visit: www.aboutads.info/choices. Please note that if you choose to decline cookies, you may not be able to access certain interactive features and services offered on NRA sites.

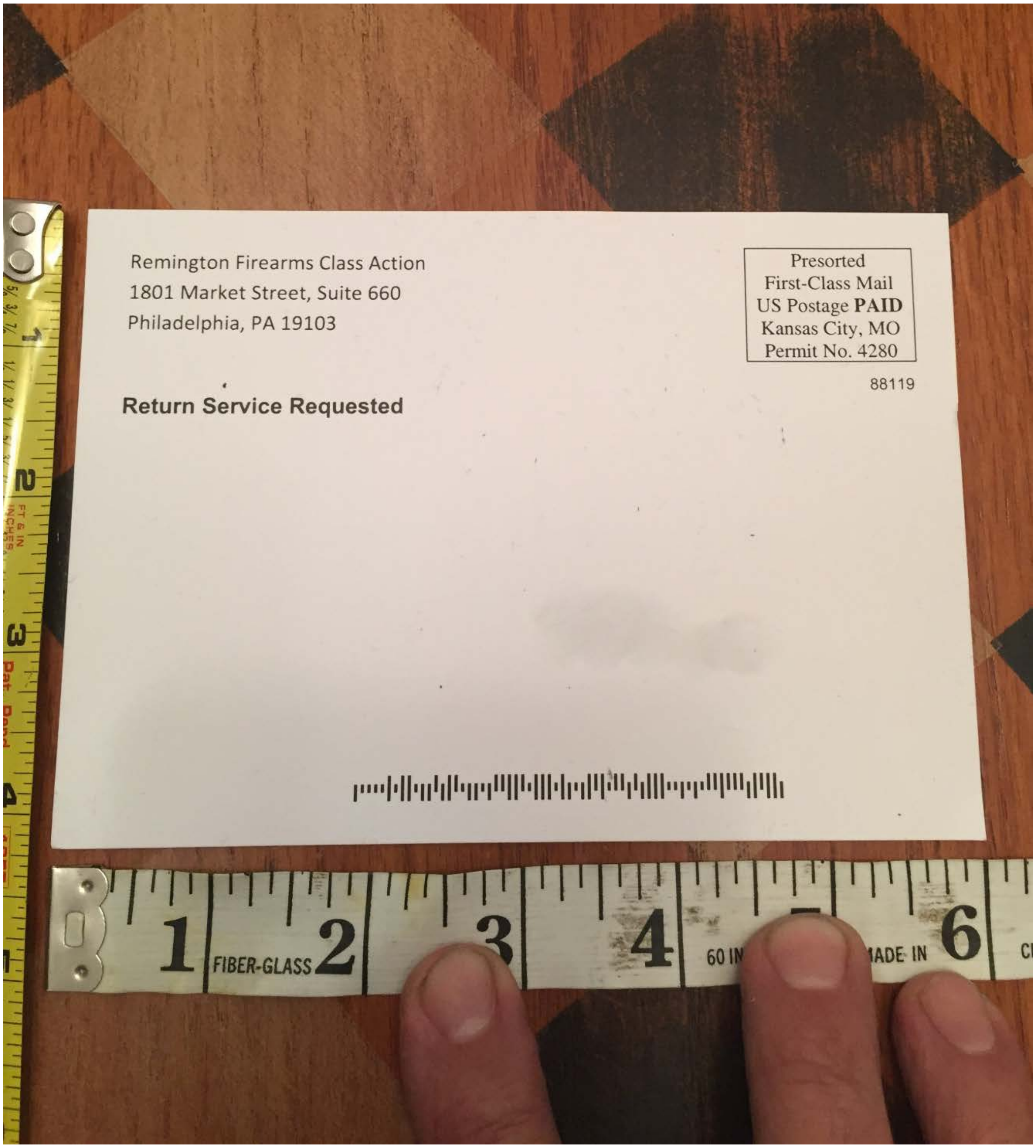
IP Addresses

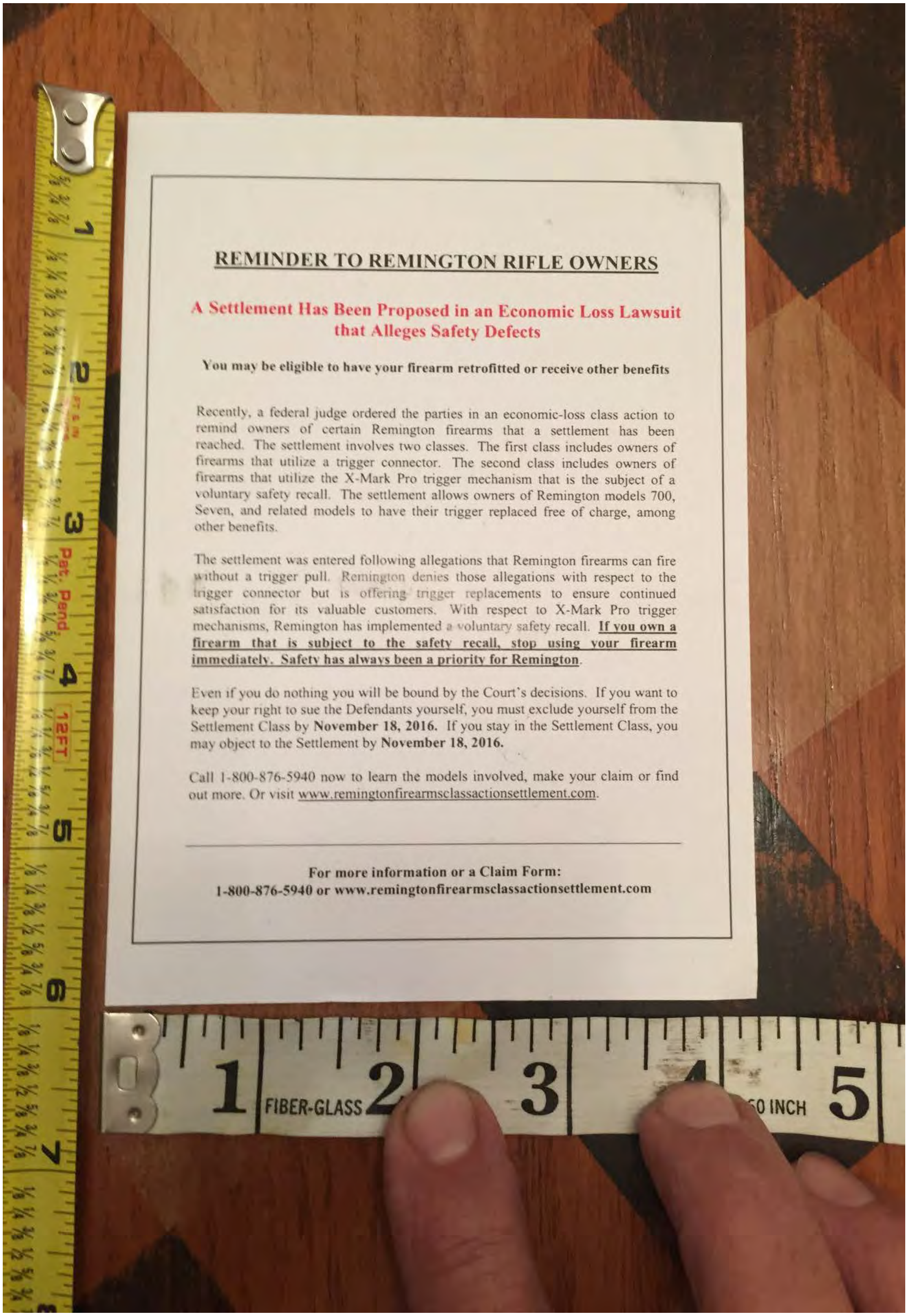
We collect and analyze traffic on our websites by keeping track of the Internet Protocol (IP) addresses of our visitors.

Personal Information

You may be asked to provide different types of personal information, including your name, date of birth, email address, mailing address or telephone number. Particular services may require additional information such as your

EXHIBIT H


Remington Firearms Class Action
1801 Market Street, Suite 660
Philadelphia, PA 19103
Return Service Requested
Presorted
First-Class Mail
US Postage PAID
Kansas City, MO
Permit No. 4280
88119
FIBER-GLASS



REMINDER TO REMINGTON RIFLE OWNERS

A Settlement Has Been Proposed in an Economic Loss Lawsuit that Alleges Safety Defects

You may be eligible to have your firearm retrofitted or receive other benefits

Recently, a federal judge ordered the parties in an economic-loss class action to remind owners of certain Remington firearms that a settlement has been reached. The settlement involves two classes. The first class includes owners of firearms that utilize a trigger connector. The second class includes owners of firearms that utilize the X-Mark Pro trigger mechanism that is the subject of a voluntary safety recall. The settlement allows owners of Remington models 700, Seven, and related models to have their trigger replaced free of charge, among other benefits.

The settlement was entered following allegations that Remington firearms can fire without a trigger pull. Remington denies those allegations with respect to the trigger connector but is offering trigger replacements to ensure continued satisfaction for its valuable customers. With respect to X-Mark Pro trigger mechanisms, Remington has implemented a voluntary safety recall. **If you own a firearm that is subject to the safety recall, stop using your firearm immediately. Safety has always been a priority for Remington.**

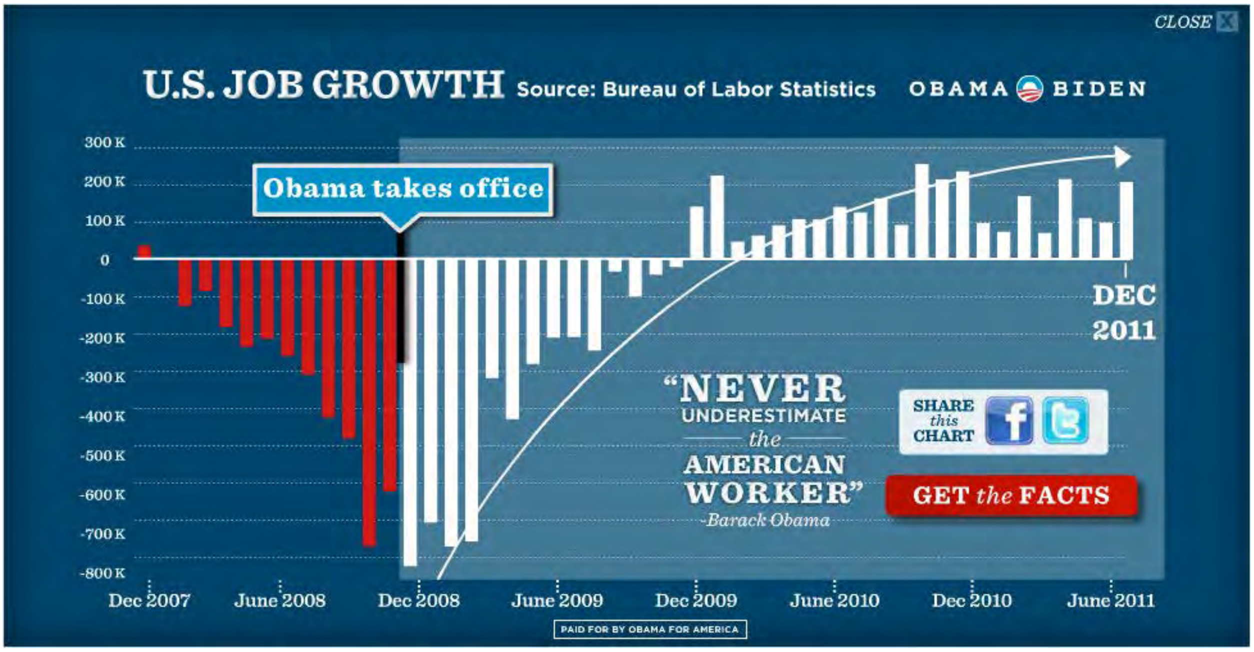
Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the Defendants yourself, you must exclude yourself from the Settlement Class by **November 18, 2016.** If you stay in the Settlement Class, you may object to the Settlement by **November 18, 2016.**

Call 1-800-876-5940 now to learn the models involved, make your claim or find out more. Or visit www.remingtonfirearmsclassactionsettlement.com.

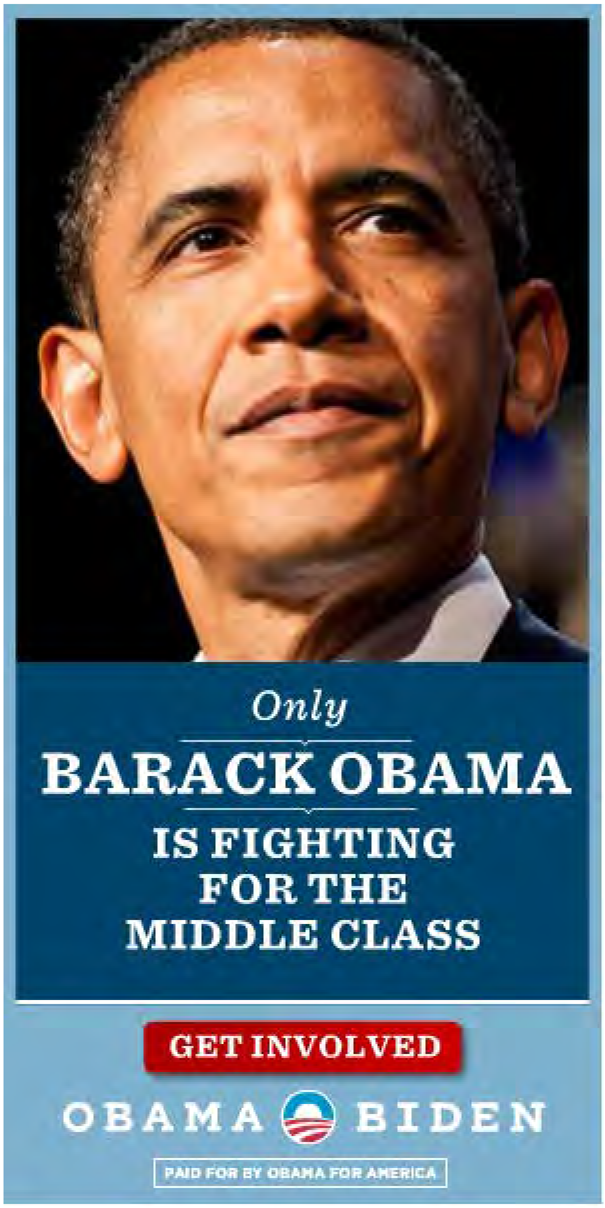
For more information or a Claim Form:
1-800-876-5940 or www.remingtonfirearmsclassactionsettlement.com

EXHIBIT I

OBAMA BIDEN
CLOSE
COLORADO VOTES EARLY
EARLY VOTING has BEGUN
CONFIRM YOUR VOTING LOCATION
PAID FOR BY OBAMA FOR AMERICA


CLOSE
U.S. JOB GROWTH Source: Bureau of Labor Statistics
OBAMA BIDEN
300 K
200 K
100 K
0
-100 K
-200 K
-300 K
-400 K
-500 K
-600 K
-700 K
-800 K
Obama takes office
DEC 2011
"NEVER UNDERESTIMATE the AMERICAN WORKER"
-Barack Obama
SHARE this CHART
GET the FACTS
Dec 2007
June 2008
Dec 2008
June 2009
Dec 2009
June 2010
Dec 2010
June 2011
PAID FOR BY OBAMA FOR AMERICA

OBAMA BIDEN
CLOSE
WISCONSIN VOTES EARLY
EARLY VOTING has BEGUN
CONFIRM YOUR VOTING LOCATION
PAID FOR BY OBAMA FOR AMERICA


Only
BARACK OBAMA
IS FIGHTING FOR THE MIDDLE CLASS
GET INVOLVED
OBAMA BIDEN
PAID FOR BY OBAMA FOR AMERICA

Join the
MOVEMENT TODAY!
GET INVOLVED
PAID FOR BY OBAMA FOR AMERICA

Because of Barack Obama
DON'T ASK DON'T TELL IS HISTORY
32 MILLION NEW PEOPLE WILL HAVE HEALTH CARE
THE COMBAT MISSION IN IRAQ ENDED
2012
BARACKOBAMA.COM
JOIN THE CAMPAIGN
PAID FOR BY OBAMA FOR AMERICA

Because of
Barack Obama
The combat mission in Iraq ended
Don't Ask Don't Tell is history
First Latina on the Supreme Court
32 million new people will have health care
2012
BARACKOBAMA.COM
JOIN THE CAMPAIGN
PAID FOR BY OBAMA FOR AMERICA

EXHIBIT J

85% 7:41 AM

Fwd: REMINDER TO REMINGTON RIFLE...

Subject: REMINDER TO REMINGTON RIFLE OWNERS REGARDING SETTLEMENT OF LAWSUIT THAT ALLEGES SAFETY DEFECTS

Reply-To: Remington Arms Company <donotreply@remington.com>

View Online

REMINDER TO REMINGTON RIFLE OWNERS

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Call 1-800-876-5940 now to learn the models involved, make your claim or find out more. Or visit www.remingtonfirearmsclassactionsettlement.com.

Remington Outdoor Company | 870 Remington Drive | Madison, NC 27025 | United States
Unsubscribe

EXHIBIT K

United States Senate

WASHINGTON, DC 20510

July 11, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Chairwoman Ramirez,

We write to you regarding digital advertising fraud and the associated negative economic impact on consumers and advertisers.

The landscape of advertising in this country has changed considerably. As media consumption has expanded to an ever-larger array of platforms and sources, advertisers have been forced to rethink their marketing efforts to reach consumers across a broader media landscape. These developments have prompted tremendous innovation in online marketing. At the same time, today's media ecosystem has in some ways reduced market transparency. Internet advertising revenues in 2015 were estimated to have totaled $59.6 billion,[1] yet many of the purchased online advertisements are not reaching their intended audience.

The infrastructure to accommodate the rise of digital advertising has grown as sophisticated as our financial markets. A dense network of intermediaries has arisen in order to accommodate the growing automation of ad-buying and selling, much like stock exchanges. Within these intricate exchanges, the real-time bidding for advertising content depends heavily on the recorded consumer traffic on a given platform.

Much like a stock, the value of an ad impression is highly contingent on measured demand. However, the problem with relying on ad "clicks" or "views" to measure that value is that recent studies have shown this data is frequently inaccurate.[2] According to one study, between 88 and 98 percent of all ad-clicks on major advertising platforms such as Google, Yahoo, LinkedIn, and Facebook in a given seven day period were not executed by human beings, but rather by computer-automated programs commonly referred to as "botnets" or "bots."[3] These programs allow hackers to seize control of multiple computers remotely, providing them access to personal information as well as the ability to remotely install malware to engage in advertising fraud, entirely unbeknownst to the computer's true owner.[4] The ad fraud market has scaled to such an extent that it has attracted participation by organized crime, with a recent report indicating that by 2025 ad fraud could represent the second largest revenue source for organized crime groups after drug trafficking.[5]

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[1] See Sarah Sluis, *IAB Report: Digital Advertising's $10 Billion Growth Propelled By Mobile* (April 21, 2016, 3:20pm), http://adexchanger.com/online-advertising/iab-report-digital-advertisings-10-billion-growth-propelled-by-mobile/.
[2] See Ben Elgin, Michael Riley, David Kocieniewski, Joshua Brustein, *The Fake Traffic Schemes That Are Rotting the Internet* (October 20, 2015), http://www.bloomberg.com/features/2015-click-fraud/.
[3] See Adrian Neal, *Quantifying Online Advertising Fraud: Ad-Click Bots vs Humans* (January, 2015), http://oxford-biochron.com/downloads/OxfordBioChron_Quantifying-Online-Advertising-Fraud_Report.pdf.

Bots plague the digital advertising space by creating fake consumer traffic, artificially driving up the cost of advertising in the same way human fraudsters can manipulate the price of a stock by creating artificial trading volume. In each case, markets highly sensitive to demand signals are manipulated. These bots range in sophistication. While "basic" bots can only mimic human "clicks" on an advertisement, so-called "humanoid" bots can mimic human mouse touch movements with such precision that deep behavioral analysis is required to detect them.[6] Many of these bots are advanced enough to analyze consumer web activity in order to retarget advertisements based on individual browsing preferences.

A comprehensive study conducted by White Ops and the Association of National Advertisers estimates that this market manipulation scheme will cost advertisers over $7.2 billion in the next year alone.[7] Additionally, it is anticipated that as the budget for mobile advertising grows, so will the incidence of bot fraud in mobile advertising, which already accounts for 30 percent of annual digital advertising revenue.[8]

The potential for revenue leakage is so great that our nation's leading advertisers and platforms are already working on new systems to combat these highly evolved computer programs. In February 2014, Google bought spider.io, a company focused on identifying digital ad fraud.[9] In May 2015, the Trustworthy Accountability Group (TAG), an industry group created specifically to stem advertising fraud, rolled out a "Fraud Threat List," through which members will disclose third party vendors promulgating fraudulent consumer traffic.[10] While these developments are significant, it remains to be seen whether voluntary, market-based oversight is sufficient to protect consumers and advertisers from digital advertising fraud. And in the interim, consumer confidence in digital advertising markets has eroded, as evidenced by user adoption of ad blocking tools.[11]

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[4] See The Federal Bureau of Investigation, *Botnets 101: What They Are and How to Avoid Them* (June 6, 2013, 7:00am) https://www.fbi.gov/news/news_blog/botnets-101/botnets-101-what-they-are-and-how-to-avoid-them.

[5] Patrick Kulp, *Ad Fraud Could Become the Second Biggest Organized Crime Enterprise Behind the Drug Trade* (June 9, 2016), http://mashable.com/2016/06/09/ad-fraud-organized-crime/#P7dUa9vimUql.

[6] See supra note 3, at 4.

[7] See Association of National Advertisers, *The Bot Baseline: Fraud in Digital Advertising* (2016), http://www.ana.net/content/show/id/botfraud-2016.

[8] See IAB and PricewaterhouseCoopers, *IAB Internet Advertising Revenue Report, 2015 Half Year Results* (October, 2015) http:// http://www.iab.com/wp-content/uploads/2015/10/IAB_Internet_Advertising_Revenue_Report_HY_2015.pdf.

[9] See Alex Kantrowitz, *Inside Google's Secret War against Ad Fraud* (May 18, 2015), http://adage.com/article/digital/inside-google-s-secret-war-ad-fraud/298652.

[10] See The Trustworthy Accountability Group, *Trustworthy Accountability Group (TAG) and Digital Ad Leaders Announce New Program to Block Fraudulent Data Center Traffic* (July 21, 2015) https://www.tagtoday.net/tag-and-dal-announce-new-program-to-block-fraudulent-data-center-traffic.

[11] Tim Baysinger, *The Online Industry is Losing $8 Billion a Year, and Ad Blocking Is the Least of Its Worries* (Dec. 1, 2015) www.adweek.com/news/advertising-branding/how-online-industry-losing-8-billion-every-year-168389. ("The IAB considers the adoption of ad blockers to be a side effect of the spread of malicious software, or malware, which costs a total of $1.1 billion in lost dollars.")

The cost of pervasive fraud in the digital advertising space will ultimately be paid by the American consumer in the form of higher prices for goods and services. Just as federal regulation has evolved to keep pace with the ever-growing sophistication of our financial markets, so must oversight of the digital advertising space. To this end, we respectfully request that the Federal Trade Commission (FTC) respond to the following questions:

1. As noted above, digital advertising fraud takes many forms, including through botnets and malware. Is the FTC observing a trend that favors one particular type of advertising fraud over another? If so, what factors are leading to the prevalence of that particular type of fraud?

2. What is the projected economic impact of this degree of data and revenue leakage amongst media owners or publishers?

3. What steps is the FTC taking to protect consumer data and mitigate fraud within the digital advertising industry? What regulatory agency currently provides oversight of mobile advertising platforms?

4. What steps can be taken to reform opaque advertising exchanges?

5. What can be done to more closely align the incentives of ad tech companies with publishers, advertisers and consumers?

6. To the extent that criminal organizations are involved in perpetuating digital advertising fraud, how is the FTC coordinating with both law enforcement (e.g., the Department of Homeland Security or the Federal Bureau of Investigation) and the private sector to formulate an appropriate response?

Thank you for your timely attention to these issues.

Sincerely,

Mark R. Warner
United States Senator

Charles E. Schumer
United States Senator

EXHIBIT L

Finding Optimal Ad Frequency in a People-Based World

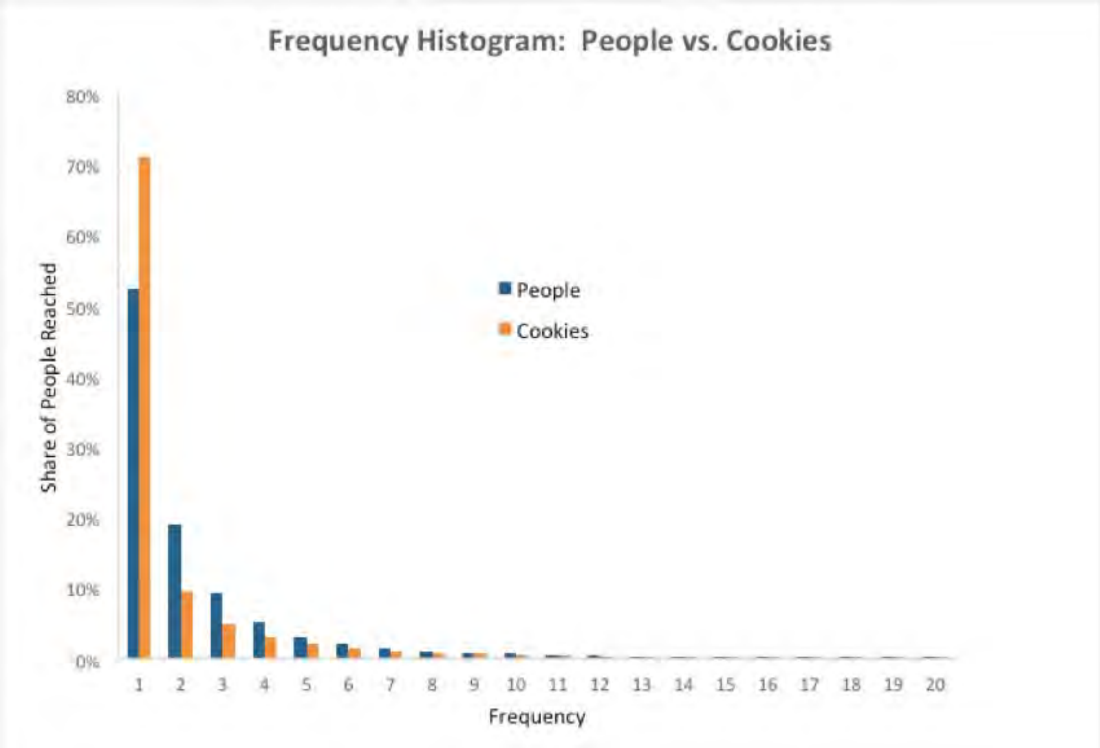
Posted by James Dailey (https://atlassolutions.com/author/atlasjames266/) on September 30, 2015 (https://atlassolutions.com/2015/09/)

by James Dailey, Head of Atlas Marketing Sciences

A typical person sees hundreds of ads each day. Show your ad only once, and they may not remember it. Show an ad hundreds of times, and people will likely get frustrated and annoyed. Managing ad frequency improves yield and enables marketers to redeploy impressions and broaden the reach of their marketing messages. Finding the ideal ad frequency depends on having accurate information. Unfortunately, cookie-based measurement complicates this issue instead of clarifying it. If marketers want to find the optimal ad frequency to drive their conversions efficiently, they need to rely on people-based measurement instead.

Because cookies are unable to keep up with the cross-everything habits of real people, they often provide a distorted view of reach and frequency. When relying on traditional cookie-based measurement alone, a typical Atlas client sees their reach overstated by 58%, and their ad frequency understated by 141%.[1] So how does this translate in the real world? It means that if cookie-based measurement tells you your ad reached 100 people, in reality it only reached 42. And if you originally set a frequency cap at 10 ads per cookie, it's more likely a real person would've actually been exposed to 24[1].

We can see a further example of this by looking at a frequency histogram — a depiction of numerical data in graphical form. What follows is Atlas' analysis of a DR client's digital ad serving activity in May 2015[2]:

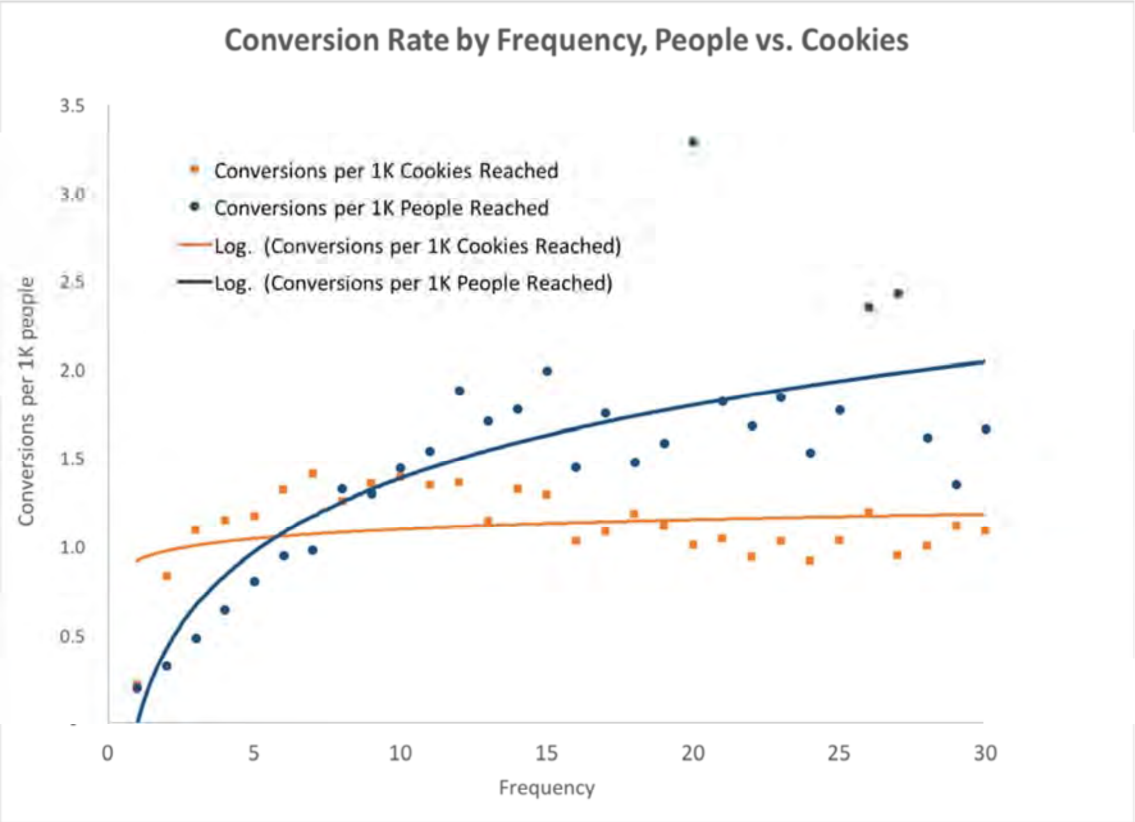


Looking at the chart, we see that 71% of cookies had an ad frequency of one (orange) vs. 52% of people (blue). Many people were exposed to two, three, four or more ads, but some of an individual cookie only captured one ad impression during the same time period. For this reason, the cookie-based reporting is artificially "shifted left," and does not accurately depict the ad frequency experience of real people.

But what are the practical implications of this observation for setting frequency caps? And how does this information distort our understanding of the relationship between ad frequency and conversion? Pulled from the same dataset, the next chart shows the conversion rates for people and cookies when exposed to different ad frequencies:

This chart tells a similar story as the first histogram, only now we see conversion rates as well. Note how the cookie-based frequency curve (orange) is much flatter and shows higher conversion rates at low frequencies. The people-based line (blue) is steeper and shows a more pronounced leveling-off pattern above 15 impressions.

With cookie-based reporting (orange), a portion of the population is artificially "pulled left," and we're given a lower frequency than what people truly experienced. As a result, the relationship between frequency and conversion is obscured and the curve appears flatter than it should be. Looking at cookies, you'd think the difference in conversion between showing 5 ads and 10 ads isn't very much.


Conversion Rate by Frequency, People vs. Cookies
Conversions per 1K Cookies Reached
Conversions per 1K People Reached
Log. (Conversions per 1K Cookies Reached)
Log. (Conversions per 1K People Reached)
Conversions per 1K people
3.5
3.0
2.5
2.0
1.5
1.0
0.5
0
5
10
15
20
25
30
Frequency

The conversion data are still accurate, but the overall depiction is not — the people who made purchases at the "lower end" of the orange curve were actually exposed to higher ad frequencies than cookies could capture.

In contrast, the people-based curve (blue) provides a more complete picture and gives us a better understanding of real people and their behavior. This is because it captures ad impressions served across browsers and devices over time. We can now see that there's a meaningful increase in conversion performance between people who saw 5 ads and those who saw 10. We know we can rely on this trend line to help us set frequency caps in the future.

When marketers focus on accurate people-based reporting, the relationship between frequency and conversion becomes clearer and reflects traditional expectations. Now we're able to start exploring the question of ideal ad frequency and help steer our brand away from overexposure and annoyance. This is one more way people-based marketing can help marketers adapt to real audience behavior and find value-based insights for their campaigns.

1. Source: Atlas internal data, March 2015

2. Source: Atlas internal data, May 2015

EXHIBIT M

Examples of News Stories - Fraud of Overstated Internet Banner Reach Statistics

Within the last year, a deluge of national and advertising industry press is revealing a massive $6.3 billion to $8.2 billion internet advertising fraud. Revelations include that millions of internet banner "impressions" that advertisers have been buying for incredibly low prices are seen, not by human beings, but by robots or are outright fake. The majority are not "viewable" as that term is defined:[1]

The Alleged $7.5 billion Fraud in Online Advertising. MOZ, June 22, 2015. "*This is the biggest advertising story of the decade, and it's being buried...the three main allegations…half or more of the paid online display advertisements that ad networks, media buyers, and ad agencies have knowingly been selling to clients over the years have never appeared in front of live human beings. In another words, an "impression" occurs whenever one machine (an ad network) answers a request from another machine (a browser)… Just in case it's not obvious: Human beings and human eyeballs have nothing to do with it. If your advertising data states that a display ad campaign had 500,000 impressions, then that means that the ad network served a browser 500,000 times—and nothing more.*"[2]

Is Ad Fraud Even Worse Than You Thought? Bloomberg Businessweek Seems to Think So. Ad Age, September 25, 2015. "*Just how much of a problem is ad fraud? If you're a regular reader of Ad Age, you know it's a big problem—though just how big depends on lots of variables, including specific digital agencies, ad-tech vendors and publishers a given marketer chooses to work with.*"[3]

How Much of Your Audience is Fake? Marketers thought the Web would allow perfectly targeted ads. Hasn't worked out that way. Bloomberg Businessweek, September 25, 2015. *"The most startling finding: Only 20 percent of the campaign's "ad impressions"—ads that appear on a computer or smartphone screen—were even seen by actual people...As an advertiser we were paying for eyeballs and thought that we were buying views. But in the digital world, you're just paying for the ad to be served, and there's no guarantee who will see it, or whether a human will see it at all...Increasingly, digital ad viewers aren't human. A study done last year in conjunction with the Association of National Advertisers embedded billions of digital ads with code designed to determine who or what was seeing them. Eleven percent of display ads and almost a quarter of video ads were "viewed" by software, not people. According to the ANA study, which was conducted by the security firm White Ops and is titled The Bot Baseline: Fraud In Digital Advertising, fake traffic will cost advertisers $6.3 billion this year."*[4]

---

[1] A display ad is considered viewable when 50% of an ad's pixels are in view on the screen for a minimum of one second, as defined by the Media Ratings Council.

[2] https://moz.com/blog/online-advertising-fraud, last visited April 28, 2016.

[3] http://adage.com/article/the-media-guy/ad-fraud-worse-thought/300545/, last visited April 28, 2016.

[4] http://www.bloomberg.com/features/2015-click-fraud/, last visited April 28, 2016.

What's Being Done to Rein in $7 Billion in Ad Fraud. AdWeek, Feb. 21, 2016. "*Long a dirty little secret of the digital media business, the topic of ad fraud has been thrust front and center in discussions among agency executives, advertisers and publishers over the last three years. Bot traffic, or nonhuman digital traffic, is at its highest ever, and recent projections from the Association of National Advertisers have more than $7 billion in advertising investment wasted*."[5]

Inside Yahoo's troubled advertising business. CNBC, Jan. 7, 2016. "*The company's ad business, which brought in $1.15 billion in the second quarter of 2015, is rife with ad fraud, multiple sources told CNBC...the company's programmatic video ad platform generates mostly fraudulent ad traffic, and otherwise does not work as promised. The platform is largely powered by BrightRoll, which was acquired by Yahoo in November 2014.... discovered 30 to 70 percent of its ads were not running in areas where Yahoo was claiming they were. ...Another source said that it found BrightRoll's traffic was mostly coming from data centers' IP addresses, suggesting most of the ad views were nonhuman and fraudulent*."[6]

Ad Fraud, Pirated Content, Malvertising and Ad Blocking Are Costing $8.2 Billion a Year, IAB says. Ad Age, Dec. 1, 2015. "*More than half of the money lost each year derives from 'non-human traffic' -- fake advertising impressions that advertisers pay for but don't represent contact with real consumers, the [Interactive Advertising Bureau] said in the report, which was conducted for the group by Ernst & Young*."[7]

No More Ads. Wall Street Journal, February, 17, 2015. "*As if the online ad industry didn't have enough thorny issues to deal with–from fraud to ads nobody can see–here come the ad blockers. Reams of people, mainly young and tech-savvy folks, the kinds of people lots of advertisers want to reach, are downloading and utilizing ad blocking software–or tools that keep online ads from ever appearing on a person's screen. Ad blocking is on the rise, and the topic has been thrust to the top of the list by online ad industry leaders, reports Ad Age. In the short term, this creates another worry for brands, who now have to fret about whether they are paying for ads that are getting blocked. But in the long term, the bigger worry for Web publishing is when does the cumulative effect of what seems like a mounting list of problems cause more advertisers to say, "You know what? The Internet just isn't ready for prime time, or my ad budgets*."[8]

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[5] http://www.adweek.com/news/advertising-branding/whats-being-done-rein-7-billion-ad-fraud-169743, last visited April 28, 2016.

[6] http://www.cnbc.com/2016/01/07/yahoos-troubled-advertising-business.html, last visited April 28, 2016.

[7] http://adage.com/article/digital/iab-puts-8-2-billion-price-tag-ad-fraud-report/301545/, last visited April 28, 2016.

[8] http://blogs.wsj.com/cmo/2015/02/17/cmo-today-apples-watch-is-coming-soon/, last visited April 28, 2016.

EXHIBIT N

Remington Firearms Class Action Settlement

Todd Home 8

Liked Message Share More

Remington
Firearms
Class Action
Settlement

Remington Firearms Class Action Settlement

- Home
- About
- Photos
- Likes
- Posts

Create a Page

Status Photo / Video

Write something on this Page...

Remington Firearms Class Action Settlement updated their profile picture.
March 14 ·

Remington
Firearms
Class Action
Settlement

Like Comment Share

7 Chronological

1 share

View 1 more comment

Patrick Zimmerman II hmm. i still want to know who they cought in the woods dressed in all black that the police rook
Like · Reply · May 7 at 10:10pm

Angel Morales Sandy and the Florida gay club shooting. Where even a patron yelled as he had escaped why weren't the cops moving in. Sheeple galore eating it up.
Like · Reply · October 4 at 5:34am · Edited

Write a comment...

See More

Search for posts on this Page

VISITOR POSTS

Bryan Greer
October 16 at 1:04pm

This is just another way for the lawyers to make millions off the backs of poor dumb slobs! You will get nothing from this!!

Like · Comment

Jordan Paul
October 14 at 10:02am

This is ridiculous.

Like · Comment

Franklin Hughes
April 17 at 1:13pm

Sandy hook was faked. No one died. I hope you all know that you're going to burn in hell for your part in this lie.

Like · Comment

Chat (4)

EXHIBIT O

Exhibit A

					Media 360 Single Schedule

Target: All - Rifle - Sport & Recreation Equipment - Own

Population (000): 27343

Target Filename: All-Rifle-Sport&RecreationEquipment-Own_M132Y.DEU

Population (000): 27343

Study: M132Y MRI 2013 DOUBLEBASE STUDY

Formula Based, Tru Cume R&F method

Vehicle Totals for target All - Rifle - Sport ...

			Audience	%	%
Media	**Insertions**	**GRP**	**[000]**	**Coverage**	**Reach**
American Rifleman	1	7.25	1,984	7.25	7.25
Guns & Ammo	1	9.8	2,680	9.8	9.8
Parade Carrier Newspapers	1	27.77	7,594	27.77	27.77
American Hunter	1	6.95	1,901	6.95	6.95
Field & Stream	1	10.64	2,910	10.64	10.64
Athlon Sports	1	19.83	5,423	19.83	19.83

Media Totals

	Total		%	Avg	Effective
	Uses	**GRP**	**Reach**	**Frequency**	**Reach % (3+)**
Schedule 1	6	82.26	49.39	1.67	7.02

EXHIBIT P

Exhibit B

Media 360 Single					
Target: Own Rifle					
Population (000): 25260 (10.6% of Comp Base)					
Target Filename: 1Rifle_M152Y.DEU					
Population (000): 25260 (10.6% of Comp Base)					
Study: M152Y MRI 2015 DOUBLEBASE STUDY					
Formula Based, Tru Cume R&F method, v2.9.0.14					
Vehicle Totals for target Rifle					
			Audience	**%**	**%**
Media	**Insertions**	**GRP**	**[000]**	**Coverage**	**Reach**
Athlon Sports & Life	1	17.63	4,454	17.63	17.63
American Hunter	1	5.9	1,490	5.9	5.9
American Rifleman	1	8.47	2,141	8.47	8.47
Parade Carrier Newspapers	1	23.44	5,921	23.44	23.44
Field & Stream	1	8.53	2,156	8.53	8.53
Guns & Ammo	1	10.48	2,648	10.48	10.48
Media Totals					
	Total		**%**	**Avg**	**Effective**
	Uses	**GRP**	**Reach**	**Frequency**	**Reach % (3+)**
Schedule 1	6	74.47	**42.23**	1.76	7.48

EXHIBIT Q

CAMPAIGN REACH/FREQUENCY REPORT

Geography : United States
Universe : Home and Work
Time Period : February 2015
Campaign Duration : 30 Days
Target : Persons: 18+
Media : Google Network, Xaxis Network, Yahoo Network
Graph type : None
Reach Option : Total Population-Based
Date : 7/25/2016

comScore

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		Avail Page Views (000)	Impr as % of Avail Page Views	Impressions (000)	UVs (000)	% Reach Total Pop	Average Frequency	Reach Factor (%)	% Composition Impressions	% Composition UV	GRPs Total Pop
	Total Campaign										
1	Total Audience	541,138,168	0.0	41542	33,833	10.81	1.2		100.0	100.0	13
2	Persons: 18+	513,128,223	0.0	38845	30,437	12.37	1.3		93.5	90.0	16
[N]	Google Ad Network**										
3	Base Audience : Total Audience	390,588,768	0.0	21542	19,646	6.28	1.1	100.0	100.0	100.0	7
4	Persons: 18+	365,644,982	0.0	20166	18,194	7.39	1.1	100.0	93.6	92.6	8
[N](U)	Xaxis Publisher Network**										
5	Base Audience : Total Audience	315,688	3.2	10000	6,231	1.99	1.6	100.0	100.0	100.0	3
6	Persons: 18+	280,360	3.2	8881	5,578	2.27	1.6	100.0	88.8	89.5	4
[N]	Yahoo Audience Network**										
7	Base Audience : Total Audience	150,233,712	0.0	10000	9,544	3.05	1.0	100.0	100.0	100.0	3
8	Persons: 18+	147,202,880	0.0	9798	9,291	3.78	1.1	100.0	98.0	97.4	4

CAMPAIGN REACH/FREQUENCY REPORT

Geography :	United States
Universe :	Home and Work
Time Period :	June 2016
Campaign Duration :	30 Days
Target :	Persons: 18+
Media :	Google Network, Xaxis Network, Yahoo Network
Graph type :	None
Reach Option :	Total Population-Based
Date :	7/24/2016

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		Avail Page Views (000)	Impr as % of Avail Page Views	Impressions (000)	UVs (000)	% Reach Total Pop	Average Frequency	Reach Factor (%)	% Composition Impressions	% Composition UV	GRPs Total Pop
	Total Campaign										
1	Total Audience	637,933,485	0.0	40920	33,292	10.54	1.2		100.0	100.0	13
2	Persons: 18+	604,176,054	0.0	38845	30,623	12.30	1.3		94.9	92.0	16
	[n1] Google Display Network**										
3	Base Audience : Total Audience	487,695,410	0.0	20920	19,081	6.04	1.1	100.0	100.0	100.0	7
4	Persons: 18+	456,380,224	0.0	19577	17,699	7.11	1.1	100.0	93.6	92.8	8
	[N](U) Xaxis Publisher Network**										
5	Base Audience : Total Audience	576,472	1.7	10000	6,207	1.97	1.6	100.0	100.0	100.0	3
6	Persons: 18+	543,565	1.7	9429	5,809	2.33	1.6	100.0	94.3	93.6	4
	[N] Yahoo Audience Network**										
7	Base Audience : Total Audience	149,661,603	0.0	10000	9,532	3.02	1.0	100.0	100.0	100.0	3
8	Persons: 18+	147,252,265	0.0	9839	9,322	3.75	1.1	100.0	98.4	97.8	4

EXHIBIT R

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CYNTHIA I. CZUCHAJ, a California resident; ANGELIQUE MUNDY, a Pennsylvania resident; BARBARA MCCONNELL, a Michigan resident; and PATRICIA CARTER, a New York resident, individually and on behalf of themselves and others similarly situated, Plaintiffs, vs. CONAIR CORPORATION, a Delaware corporation; and DOES 1 through 10, inclusive, Defendants.	Case No:. 13-cv-01901 BEN (RBB) Class Action Declaration of Jeanne C. Finegan In Support of Defendant Conair Corporation's Opposition to Plaintiffs' Revised Motion for Approval of Notice of Class Certification and Proposed Notice Plan.

DECLARATION OF JEANNE C. FINEGAN

I, JEANNE C. FINEGAN declare as follows:

INTRODUCTION

1. I am President and Chief Media Officer of HF Media, LLC, Inc. ("HF Media") a division of Heffler Claims Group ("Heffler"). This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. The opinions I expressed in this declaration are based upon my training, and over 30 years of experience in the fields of advertising and communications coupled with reasonably relied upon principles and methods accepted and used by media professionals within the advertising and communications industry.

38. Further, *Daubert*[16] and *Kumho* hold that the reliability of a [notice] expert's testimony must be prepared and tested against the standards developed within the relevant field [*the media industry*] for quantifying how an audience has been reached and frequency of message delivered.

39. Accurate measurement of media delivery must be calculated using industry vetted software and industry accredited data sources. Therefore, when one applies accepted advertising industry tools and methods, using comScore to measure the KCC proposed plan, we see that 15,000,000 unique impressions with a one time ("1x") frequency cap on Xaxis will deliver the following:

HF MEDIA REACH ANALYSIS FOR KCC'S
PROPOSED ONLINE AND PRINT CAMPAIGN

Media	Reach Women 18+ in CA or NY
People Magazine	26.6%
Xaxis (15,000,000 IMP/ Cap 1X)	22.3 %
Combined Est. Net Reach* **Calculation assuming both male/women class members	**43.0% Women only* 33.5 to 36.6% Total Class****

**The combined media calculation uses reasonably relied upon software and is based on a formula for random duplication. Because KCC did not disclose the specific network they intend to use, as a conservative measure, we also tested results for audience delivery under the same assumptions with Google Display Network, and arrived at similar, although increased results of 50.8 to 57.6 percent combined estimated reach – still far below FJC thresholds for adequate notice.*

CONCLUSION

40. The notice program proposed by KCC, when tested using industry accepted tools and methods, reaches only **33.5 to 36.6 percent** of this proposed class. KCC's actual reach is nowhere near its reported reach of 75 percent. KCC failed to use the appropriate tools and methods accepted within the advertising and communications industry to develop a notice plan which can be accurately measured and reported to a court, which satisfies due process, and which is consistent with the Federal Judicial

[16] *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 13(1999).

Center's guidelines concerning appropriate reach analysis.

41. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 28th day of April, 2016 in Tigard, Oregon.

Jeanne C. Finegan

EXHIBIT S

RUSTKINSELLA
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a SourceHOV company

Accurately Reporting Notice Results to Courts

What We've Noticed

December 2015

by Shannon Wheatman, Ph.D. and Alicia Gehring

While the industry publicly debates questions of notice—direct versus media notice; the appropriate mix of print, broadcast, and online delivery; acceptable minimum notice reach—a more troublesome trend simmers beneath the surface: increasingly, false information is being reported to courts. Presumably unintentionally, unqualified notice providers are making serious errors in their affidavits and declarations.

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ABOUT THE AUTHORS

Shannon Wheatman, Ph.D., is the president of Kinsella Media. Dr. Wheatman uses her analytical expertise in designing, developing, analyzing, and implementing large-scale legal notification plans. She has implemented numerous programs using creative techniques that have successfully stimulated claims.
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Alicia Gehring manages a team of media planners while staying on top of the ever-evolving trends in media. She has worked in the advertising industry for more than 20 years, overseeing high-profile national campaigns as well as working with regional clients. Before coming to Kinsella Media, Alicia held positions at recognized ad agencies in New York, Louisville, and Washington D.C.
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Accurately Reporting Notice Results to Courts

What We've Noticed

December 2015

by Shannon Wheatman, Ph.D. and Alicia Gehring

While the industry publicly debates questions of notice—direct versus media notice; the appropriate mix of print, broadcast, and online delivery; acceptable minimum notice reach—a more troublesome trend simmers beneath the surface: increasingly, false information is being reported to courts. Presumably unintentionally, unqualified notice providers are making serious errors in their affidavits and declarations. Here are two recent examples:

Food Case

70%+ reach reported to the court.

KM estimated the actual measured reach was 16%.

Incorrectly combined online and print media reach by using two different target audiences that could not be combined. Also assumed every impression delivered online would reach a class member.

Pharmaceutical Case

80%+ reach reported to the court.

KM analyzed the notice program and determined the actual measured reach was 67%.

Errors were found in the calculation of online media as well as the estimated reach from direct mail.

The Federal Judicial Center's Notice Checklist recommends that judges critically review a proposed notice program and ask: "Do you have unbiased evidence supporting the plan's adequacy?"[1] The FJC Checklist also warns judges to "[b]e careful if the notice plan was developed by a vendor who submitted a low bid and might have incentives to cut corners [in order to win the administration] or cover up any gaps in the notice program."

As noted above, the most obvious issue resulting in inaccuracies is incorrect measurement of the online notice's effectiveness. An experienced media professional relies on trusted third-party tools to correctly measure and report total reach against a correctly defined target audience, including tools to measure online delivery. Online now provides unprecedented targeting capabilities, but reporting that delivery must represent the entirety of the class that can be measured across all media: digital, print, and broadcast.

Further compounding the problem are digital challenges including ad fraud, relevancy, and transparency. Today's digital capabilities make it crucial to rely on correctly reported online reach and to be diligent in watching for incorrectly reported figures. A challenge such as ad fraud (ads being served to 'bots,' or non-human traffic) requires experienced digital professionals to closely monitor online activity. Media professionals must also closely monitor campaigns to ensure ads are delivered in relevant, trusted editorial environments and deliver what was promised.

Asking pertinent questions will help practitioners vet notice providers (or preferably, notice experts) and ensure the resulting programs are reported accurately and found acceptable to courts.

[1] Federal Judicial Center, Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide, available at http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf, at 2.

WHO IS A NOTICE EXPERT?

All of this begs the question, who should be trusted as a notice expert? Many claims administrators have become "notice experts" overnight, providing courts with case citations their firm administered … without clarifying that they did not opine to these notice programs. At a minimum, a notice expert should possess all of the following traits:

- Recognition by courts of expert status through court testimony.
- Training and/or in-depth experience in media planning and paid media measurement.
- Thorough knowledge of Rule 23 and particularly of 23(c)(2)(B) requirements for notice.
- Ability to translate complicated legal issues into accurate plain language that facilitates class member understanding of the litigation and their legal rights.
- Creation of effective print, Internet, radio, and TV notices consistent with best advertising practices.
- Understanding of direct notice deliverability issues that affect notice sufficiency, whether in email, postcard, or other mailed notice formats.
- Ability to combine direct notice reach, when known, with media reach to ascertain overall unduplicated reach of class members.

VETTING NOTICE PROVIDERS: SAMPLE QUESTIONAIRRE

- **Is the notice provider's CV limited to cases on which they worked on a notice program as an expert?**
  Or does it include cases administered, without rendering an opinion?
- **Who calculated the reach of the notice program?**
  If an outside vendor, find another expert because you are not relying on an outside vendor for an opinion.
- **What target audience is being used for measurement?**
  Is it different for print and online? If so, ask the notice provider how he/she can combine apples and oranges?
- **What tools or software are being used to evaluate reach and frequency?**
  Are they industry standard (GfK MRI, comScore)?
- **Does the plan provide a mix of media?**
  Some notice providers are pushing online-only plans (without any direct notice) despite the fact that 100% of class members are not online when ads are being delivered. Almost 17% of Adults 18+ have not used the Internet in the last 30 days and that number increases to 30% for Adults 50+ and 45% for Adults 65+.[2]
- **Does the plan include reach from a press release, search ads, or other online media where reach cannot be measured?**
  Don't include reach from media that cannot be measured at the beginning of the notice program. If you include it as a measured reach at the end, your expert needs to detail how reach was calculated.
- **Does the plan factor out duplication?**
  E.g., 50% reach online + 30% reach direct mail does not equal 80%. (It equals 65% because of duplication.)
- **How was the reach of Internet components calculated?**
  Notice providers must rely on trusted measurement tools such as Comscore, the leading Internet analytics company and the standard tool for measuring online media reach. A plan should reference which online measurement software was used in reach calculations to ensure best practices are used.

[2] GFK MRI 2015 Doublebase.

EXHIBIT T

LAW360

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Think All Internet Impressions Are The Same? Think Again

Law360, New York (March 16, 2016, 3:39 PM ET) --

Jeanne C. Finegan

Internet impressions vary wildly in their ability to reach online consumers, and the old adage holds true: you get what you pay for. Now more than ever, judges and practitioners need to understand what they are getting, and what they are deeming best practicable when it comes to online banner notice. It may not be what was promised.

Categories of Online Advertising Inventory

The starting point is to understand how online advertising space ("inventory") is grouped. Basically there are three categories:

- premium
- audience and contextual targeted
- remnant or run of network ("RON")

The definition of premium inventory can be subjective, but in general, higher value is placed on this inventory because it's located within the first few pages of a website, or it is positioned "above-the-fold," or it may be a very popular page. Audience and contextually targeted inventory blends online and offline consumer shopping and loyalty data to target purchasers of products or services as they move throughout the web. Both categories are sold at a higher cost than RON. In fact, remnant inventory is sold at deeply discounted rates and consists of website space that a publisher has been unable to sell. Remnant inventory may be below the scroll or appear on a less heavily visited page, and that's why it can be purchased at such a sharp discount. Many publishers unload their remnant inventory through ad networks or ad exchanges. Ad exchanges are large pools of unsold online inventory from networks and auctioned off in a bidding system.

Online ad networks represent numerous websites or partner properties that may be grouped and promoted by category or channel for audience targeting, such as sports, health, beauty or pet ownership. Then they use proprietary software to package this inventory, targeting specific audiences who tend to visit these sites, e.g., consumers who are sports enthusiasts, or dog owners who want to feed their pets premium food, etc.

Balancing Cost and Due Process

Of course, there is always a balance between cost and the desire to reach the largest possible audiences. However, notice programs that are designed to save money by buying deeply discounted RON usually justify their decision by citing impression "tonnage" and unique impressions. Optically, using bulk "millions" of impressions served without any kind of targeting may appear impressive, but the fact is, this approach is ineffective and only used to cut costs and win business. Quality matters in the digital environment and there is a straight-line correlation between appropriate audience targeting, using quality viewable impressions, and overall advertising effectiveness[1], which is properly measured and accurately reported though reasonably relied upon methods and tools such as those provided by comScore Inc.

One problem is that lower quality RON randomly rotates (untargeted) ads on unsold less valuable sites within a network. Using this approach, advertisers give up control and targeting in return for cheap rates, meaning it's simply a scattershot approach.

It is important to understand that Internet impressions are priced on a cost-per-thousand basis ("CPM"). Moreover, CPMs are determined by variables such as the audience reached, the quality of position on a site, and the number of characteristics applied to appropriately target an online consumer. However, the unavoidable fact is that low cost CPMs pay for lower quality ad placements on lower quality sites. Furthermore, if frequency capping[2] is applied to this already low quality approach[3], the promised reach results will be nothing more than a vein hope to reach class members.

As the Federal Judicial Center Checklist warns…

"… judges need to "[b]e careful if the notice plan was developed by a vendor who submitted a low bid and might have incentives to cut corners [in order to win the administration] or cover up any gaps in the notice program."

In fact, HF Media's analysis — using industry-accepted software such as comScore — of this low-cost RON approach and/or a 1x cap, in three actual legal notice programs reveals the following:

Recent Consumer Product Case Online Reach

Reach reported to the court and to the parties — 60%

HF Media analysis actual reach — 9%

Recent Consumer Case Combined Reach

Reach reported to the court — 74%

HF Media analysis actual reach — 60%

Recent Consumer Case Combined Reach

Reach reported to the court — 70

HF Media analysis actual reach — 51%

This type of miscalculation of internet reach negatively impacts an entire outreach campaign by 20 to 40 percent or more. For a minimal 70 percent reach program, this can spell disaster for response rates and due process because it deprives consumers of a reasonable opportunity to see the banner ad.

For this reason, courts have questioned unrealistic reports of internet audience delivery. See, In re Motor Fuel Temperature Sales Practices Litig., No. 07-MD-1840, (D. Kan. Jan. 10, 2013) (rejecting the notice plan, expressing skepticism concerning reported reach[4]). In Pollard v. Remington Arms Company, Case No. 13-0086-CV-W-ODS (W.D. Missouri, Western Division, Dec. 8. 2015), the court canceled the Fairness Hearing requiring the parties to rework the notice program stating, "Thus, this low response rate demonstrates the notice process has not been effective. The parties are ordered to develop a notice plan, for the court's review, that will be effective and result in a more significant response rate.

Quality Matters

It is no secret that publishers (websites) reserve higher quality space for these higher cost CPM banner impressions. If CPMs are cheap it's because there are no restrictions on targeting or quality. Each layer of targeting increases the CPM. As a media planner adds specific targeting by geographical area, audience/contextual data targeting, quality alliance, etc., the cost increases. More and more, we see that low cost CPM's impressions are relegated to low-quality websites.

Moreover, lower quality translates into fewer online safeguards to monitor viewability or ad fraud, which may include poor ad position and ads served below the scroll, nonhuman traffic, double-dipping, and ad stacking. Sadly, all these unseen ads are still reported to courts as impressions "served."

What Does Viewability Really Mean?

It's important to understand what viewability is and how it can affect due process and consumer response. Viewability is analyzed based on two factors: time-in-view and percent in view[5]. To provide greater accountability, the Media Ratings Counsel[6] ("MRC[7]") has introduced quantifiable standards. At a minimum, ads need to be in view for at least one second and the pixels in the ad must be at least 50 percent loaded in order to count as an impression served. Ads that don't meet the MRC viewability standard get poor marks. IPG Media Lab's "Putting Science Behind the Standards" study reports that ads below MRC's standards are only seen by about 25 percent of browsers. Of those browsers, only 17 percent recalled what they saw. By comparison, 74 percent of browsers report seeing ads that are above the MRC standard and 32 percent were able to recall what they saw. Plainly, if banner ads are not in view, promised reach may be greatly inflated, or over-reported.

Further, because RON tends to be remnant and lower quality, it has become particularly vulnerable to the viewability problems described above. In fact, one network reports findings consistent with IPG: that lowest cost RON may result in only 19 percent viewable impressions. Given that these impressions are restricted to a very limited number of cheap domains (web properties), this greatly hinders reach goals.

Further, comScore's AdAnalytics Best Practices Booklet observes that viewability is often reduced by nonhuman traffic, which artificially drives up the impression count. This means that a human never actually saw the ad. Also, some online publishers, in an attempt to cram multiple banner ads quickly in the same position, rotate ads without a web page being refreshed. This is called double-dipping and it can account for up to 5 percent[8] of all impressions served. You may visit content on a web page and momentarily see a banner ad before it flips to another ad. This eliminates your opportunity to fully view it or click on it. Unfortunately, it counts as an impression served. If your administrator has capped impressions with a one-time frequency, or unique impression, then the opportunity to be informed simply vanishes.

Conclusion

The notion that effective online reach goals can be delivered through a scattershot RON notice program, using the cheapest possible inventory, is simply false. That's why measuring the value of a notice program simply based on its price will not give the parties an accurate picture of audience delivery. Quality, audience targeting, and greater viewability come at a reasonable cost — you get what you pay for.

That said, when a media planner uses targeted premium inventory, fewer impressions are actually needed to achieve reach goals. The bottom line: the online media environment is complex, it is not the silver bullet for cheap audience reach. Practitioners can avoid this "too good to be true" trap by asking your notice provider to supply their analytical support for their proposed notice plan. Understand what you are buying. The lowest cost programs may not be reasonably calculated and may not be delivering the promised audience. If you see a low-cost, high-reach program that includes impressions proposed as RON and/or unique impression frequency capping, then ask if your provider's research validation relies upon industry-accredited and vetted solutions such as comScore or Nielsen. Calculating an online program simply against U.S. Census population data, or broad population data is simply not acceptable because it cannot take into consideration specific media usage habits of a target audience. But remember, even if they are using validation, scattershot RON tends to be low quality inventory subject to issues of viewability and, therefore, may not deliver what you expect. Obtaining answers to these questions can save money and resources, reduce frustration, and ensure class members actually have an opportunity to see a notice and be informed of their rights.

—By Jeanne C. Finegan, HF Media LLC

Jeanne Finegan, APR, is president and chief media officer of HF Media LLC, a division of Heffler Claims Group LLC.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Viewability is an online metric used to measure impressions that are visible on the screens of a user. Each of these impressions is called a 'viewed impression', differentiating from all impressions on a computer screen, in or out of view. It is recognized that an "opportunity to see" the ad exists with a viewable ad impression, which may or may not be the case with a served ad impression. Source: Media Rating Council.

[2] Frequency capping is an insufficient approach in the class action context, where a class member is presented with an online banner ad only once or twice during an entire notice program campaign. See: Finegan, "Why You Need To See An Online Ad More Than Once" Law360, Dec. 3, 2015.

[3] A current trend by some administrators is to sharply reduce costs by serving only one banner ad to a consumer over an entire 30 or more day campaign.

[4] The administrator reported internet audience reach in each state of 75 percent against a population of 16 years and older by using U.S. Census data – not media research data. Census data cannot take into consideration specific media usage habits of a target audience. (This is why a media expert needs to use industry vetted software such as comScore to accurately measure and report online reach and frequency calculations.) See: Supplemental Affidavit of Jeffrey D. Dahl Regarding the Notice Plans for Class Action Settlements And California Trial Classes, June 21, 2013, p. 4 paragraph 9: "The targeted number of impressions to reach the 75% target was calculated by multiplying the population of individuals 16+ in each State multiplied by the reach percentage target (75 percent) multiplied by the frequency target of 2.0 for the Settlement States and 1.0 times for the Non-Settlement States." See, Id. Exhibit 13. (**Here the Court was right to be skeptical about the internet reach for this notice program. Here, the online plan inappropriately used U.S. Census data to report reach. However, Census data cannot account for behavior - media usage habits, audience duplication, or viewability issues, and therefore, would be inaccurate. Further, it should be noted that comScore does not provide reach on a state level, nor does it provide reach outside the contiguous states, or in the territories.

[5] MRC Viewable Ad Impression Guidelines, August 18, 2015 - Pixel Requirement: Greater than or equal to 50 percent of the pixels in the advertisement (1/2 the banner ad) were on an in-focus browser tab on the viewable space of the browser page; Time Requirement: The time the pixel requirement is met was greater than or equal to one continuous second, post ad render.

[6] http://mediaratingcouncil.org/081815%20Viewable%20Ad%20Impression%20Guideline_v2.0_Final.pdf

[7] In the early 1960's Congressional Hearings, later called the Harris Committee Hearings, looked into regulation of audience research related to the TV and Radio industries,." The Harris Committee hearings resulted in the formation of an Industry-funded organization to review and accredit audience rating services called the Broadcast Rating Council (now referred to as the MRC).

[8] http://www.sizmek.com/resources/post/beware-of-publisher-double-dipping

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EXHIBIT U

RD-48 REV. 6-58

REMINGTON ARMS COMPANY, INC.
INTER-DEPARTMENTAL CORRESPONDENCE

Remington

RECEIVED
JAN 8 - 1979
R. A. PARTNOY

RBS

cc: E. F. Barrett
J. C. Williams
R. A. Partnoy

January 3, 1979

RECEIVED
JAN 9 1979
R. B. SPERLING

TO: PHILIP H. BURDETT
J. P. MC ANDREWS

FROM: R. W. STEELE

Reserve for Model 600 Center Fire Rifle Recall Program

We propose to establish a reserve of $1,000,000 at December 31, 1978 in order to cover the estimated liability incurred for the Model 600 center fire rifle recall program (i. e., the program to recall the Mohawk Model 600, as well as the guns with similar trigger assemblies, Remington Models 600 and 660 and the XP-100, which were manufactured before February 1975).

The program, which was initiated in late October at the time of the Coates settlement, is expected to continue through the balance of 1979 and carry over to some extent into succeeding years. To date a substantial amount of effort has been expended on establishing a network of 173 domestic gunsmiths, as well as selected gunsmiths in Canada, to install replacement trigger assemblies on guns being recalled. Telephone lines with toll-free numbers have been rented for gun owners to obtain information concerning return procedures and participating gunsmiths. Advertising concerning the recall has been placed in January issues of shooting magazines and plans have been developed for direct notification of gun owners. Further expenditures for advertising and consumer notification will be made as circumstances warrant.

Due to the large number of gunsmiths involved in the program, it has not yet been possible to obtain an accurate reading on the number of guns returned to date. However, we estimate this number to be 8,000. The January advertising is expected to bring a substantial increase in gun returns and a substantial direct consumer notification effort to be made early in 1979 should further increase returns.

The total number of guns subject to recall is approximately 200,000. We, of course, seek the return of all of these guns; but realistically our plans are geared to a total return of 50,000 guns. The attached calculation of the reserve amount is based on a 50,000 gun return. This is expected to result in a total recall expenditure of $1,000,000, as proposed for the reserve.

Based on the above estimates of 50,000 guns and $1,000,000, the reserve would be liquidated in 1979 to firearms cost of goods sold at the rate of $20 per gun repaired.

R. W. Steele

RWS:mrp
Attach.

REM 0086572

LUN 0017906

REMINGTON ARMS COMPANY, INC

CALCULATION OF RESERVE FOR CENTER FIRE RIFLE RECALL PROGRAM

Item	Amount
Number of guns - 50,000	
Cost of trigger assemblies ($5 each)	$ 250,000
Gunsmith cost ($8 average per gun)	400,000
Direct consumer notification	200,000
Recall advertising	40,000
Renting of telephone lines	
Atlanta	20,000
Connecticut	15,000
Ilion	5,000
Miscellaneous	70,000
Total	$1,000,000

WLF:mrp
1/3/79

REM 0086573

LUN 0017907

via telephone call

October 24, 1978

Today, the Remington Arms Company, Inc., announced the recall of Models 600, 660, Mohawk 600, XP-100 bolt action guns, produced prior to February, 1975, because of a possible safety problem.

As a Remington Recommended Gunsmith, your shop has been listed with an 800 Enterprise message receiving center in Atlanta, Georgia. Upon receipt of a call from an owner of one of the guns involved, the message receiving center will direct him to the Remington Recommended Gunsmith located geographically nearest to him, for repair of the gun. We estimate you may receive up to 200 of these guns for repair.

To provide the simplest and most positive repair, you will be supplied with new trigger assemblies for replacement of the original. The repair will be done at no charge to the gun owner.

Our Arms Service section reports that the replacement of the trigger assembly can be made in 7-1/2 to 10 minutes. Based on this, we plan to allow you a $5.00 bench charge for this work. Where transportation or other special handling costs are involved, we will reimburse you.

While full details have not been developed, we did want to give you this advance notice, and we will contact you in the very near future, covering all details.

Meanwhile, should any guns be returned to you, please record the date, name, address, zip code, and serial number and caliber of the gun, and hold until you have our instructions.

RD-49 REV. 5-58

REMINGTON ARMS COMPANY, INC.

INTER-DEPARTMENTAL CORRESPONDENCE

Remington

cc: K. D. Green
P. H. Holmberg

Approved Copies: R. E. Fieltiz
C. A. Riley
K. D. Green
J. H. Chisnall
J. A. Stekl
R. L. St. John
P. H. Holmberg
W. H. Forson, Jr.
C. B. Workman
R. L. Sassone - For inclusion in manual.

RECEIVED
SEP 15 1982
R. B. SPERLING

Bridgeport, Connecticut
September 13, 1982

R. B. SPERLING

RECALL INFORMATION IN FIELD SERVICE MANUAL

The Field Service Manual, which gives assembly, disassembly, and diagnostic information about our firearms, is being updated at this time. This manual is made available to our Recommended Gunsmiths and other gunsmiths who request it.

Previous editions of the manual have not had any reference to product recalls. For the following reasons, we propose to include Model 600 and XP-100 (attached) recall notes in the Field Service Manual:

- Those guns which are capable of being "tricked" are dangerous and should be modified.
- Four years after this recall was instituted, only 13% of the guns have been modified. Thus, there are still over 175,000 guns outstanding.
- Because the recall was started several years ago, some dealers and gunsmiths have discarded the descriptions of the guns subject to recall. These inserts will provide them with a ready reference.
- Recall was nationwide in scope as opposed to localized via a distribution pattern.

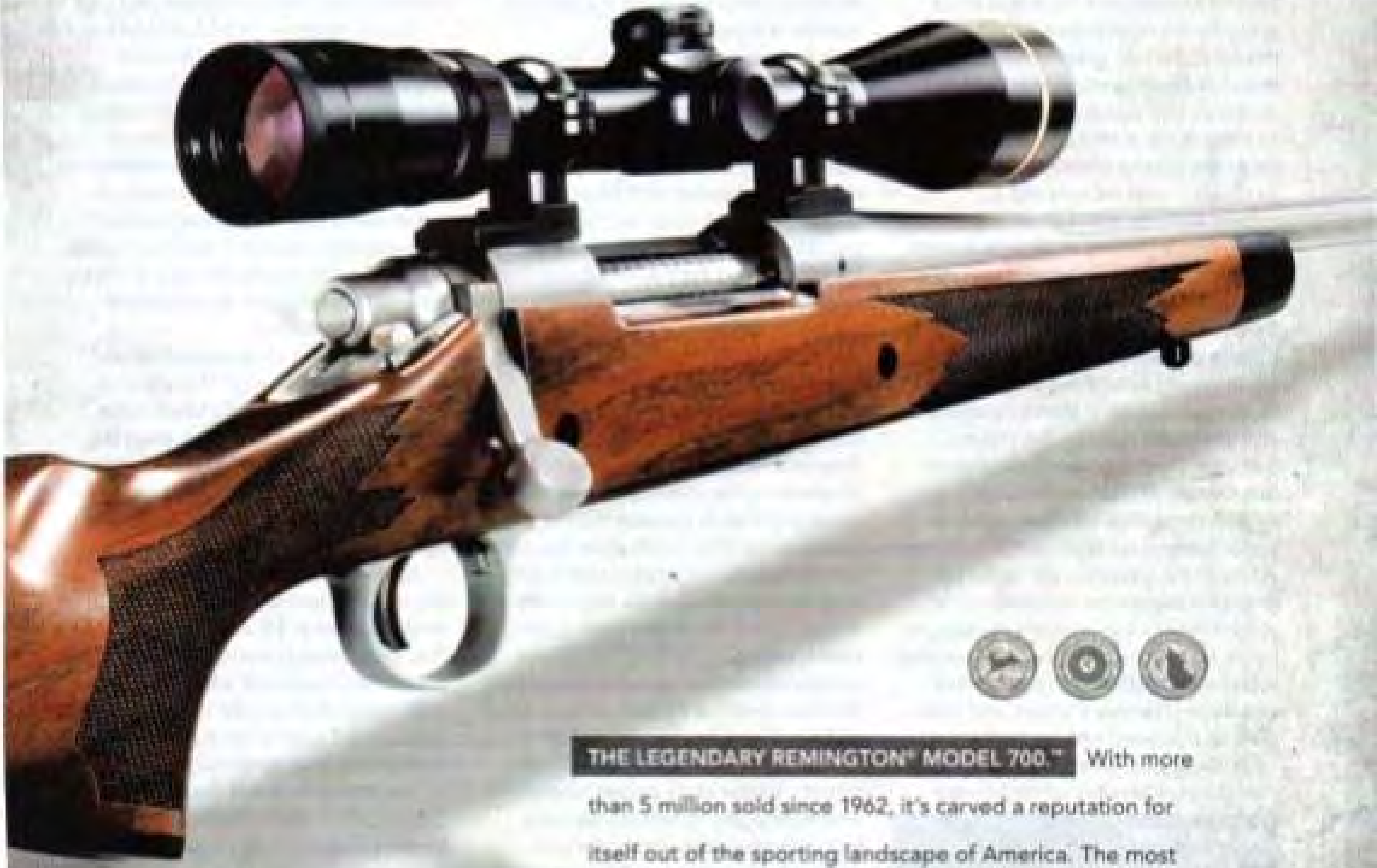
EXHIBIT V

MODEL 700™ R

Attention Politicians

OVER 5,000,000 SOLD.

THE WORLD'S LARGEST ARMY AIN'T IN CHINA.



THE LEGENDARY REMINGTON® MODEL 700.™ With more than 5 million sold since 1962, it's carved a reputation for itself out of the sporting landscape of America. The most accurate, most popular production rifle ever conceived.

Remington.

REMINGTON.COM/MODEL700

; sparkle
be as *pétillant*,
vhich later made its
: Caribbean) takes
headiness usually
ider. Right now it's
pular cocktails as
d Dark 'n' Stormy.
r ale, this so-called
c and is typically
ale, it's not ginger
bonated water) is a
te awakener; with a
d perhaps a pour of
ituted for root beer
refreshing beverage
ı authentic ginger
in liquor stores
easy to make at
ness and spice can
ır taste.

ı Tea

matcha, a pow-
se green tea that
tury Japan (by way
s deep, slightly
lso

:harts
dants.
find it
ed in hot
:ed tea, and
smoothies;
; a matcha
besn't stop
incorpo-
:ktails
sing

te

ınd
ıg
ton's
)
man

ıg twist
beer classic.

Mimi's Ginger Beer

- ¼ lb fresh ginger, peeled and cut into small pieces
- 1 quart boiling water
- ½ cup floral honey
- 5-8 whole cloves
- 1 (1-inch) cinnamon stick
- ½ cup freshly squeezed lime or lemon juice

Grated zest of 1/2 lime or lemon
Ice, citrus fruit juice and/or dark rum (optional), for serving

1. Put ginger in a food processor, adding just enough cold water to puree it. Scrape pureed ginger into a large, heatproof glass or ceramic bowl or pitcher and add boiling water, honey, cloves, cinnamon stick, zest and juice. Cover loosely with a kitchen towel and keep mixture in a warm place for about 4 hours, skimming off the foam as it accumulates on the surface.

2. Stir in 1 quart cold water and taste for sweetness, adding more honey or lemon or lime juice as needed. Strain ginger beer and pour it into ceramic or glass bottles. Cap tightly and store in the refrigerator. Serve ginger beer as soon as it is chilled, or wait 2-3 days for it to ferment and start to fizz slightly. Dilute with ice, more cold water, citrus juice—or, for an extra jolt, dark rum. Chill, covered, for up to 1 week. Makes about 2 quarts.

There's ginger beer in my float!

LEGAL NOTICE OF SETTLEMENT

If you own certain Remington firearms, you may be eligible for benefits from a class action settlement.

A proposed nationwide Settlement has been preliminarily approved in a class action lawsuit involving certain Remington firearms. The class action lawsuit claims that trigger mechanisms with a component part known as a trigger connector are defectively designed and can result in accidental discharges without the trigger being pulled. The lawsuit further claims that from May 1, 2006 to April 9, 2014, the X-Mark Pro® trigger mechanism assembly process created the potential for the application of an excess amount of bonding agent, which could cause Model 700 or Seven bolt-action rifles containing such trigger mechanisms to discharge without a trigger pull under certain limited conditions. The lawsuit contends that the value and utility of these firearms have been diminished as a result of these alleged defects. Defendants deny any wrongdoing.

Who's included?

The Settlement provides benefits to:

(1) Current owners of Remington Model 700, Seven, Sportsman 78, 673, 710, 715, 770, 600, 660, XP-100, 721, 722, and 725 firearms containing a Remington trigger mechanism that utilizes a trigger connector;

(2) Current owners of Remington Model 700 and Model Seven rifles containing an X-Mark Pro trigger mechanism manufactured from May 1, 2006 to April 9, 2014 who did not participate in the voluntary X-Mark Pro product recall prior to April 14, 2015; and

(3) Current and former owners of Remington Model 700 and Model Seven rifles who replaced their rifle's original Walker trigger mechanism with an X-Mark Pro trigger mechanism.

What does the Settlement provide?

Settlement Class Members may be entitled to: (1) have their trigger mechanism retrofitted with a new X-Mark Pro or other connectorless trigger mechanism at no cost to the class members; (2) receive a voucher code for Remington products redeemable at Remington's online store; and/or (3) be refunded the money they spent to replace their Model 700 or Seven's original Walker trigger mechanism with an X-Mark Pro trigger mechanism.

How can I obtain benefits?

Submit a Claim Form. Claim Forms can be found at www.remingtonfirearmsclassactionsettlement.com or by calling 1-800-876-5940.

What are my legal rights?

Even if you do nothing you will be bound by the Court's decisions. If you want to keep your right to sue the Defendants yourself, you must exclude yourself from the Settlement Class by October 5, 2015. If you stay in the Settlement Class, you may object to the Settlement by October 5, 2015.

The Court will hold a hearing on December 14, 2015, to consider whether to approve the Settlement and a request for attorneys' fees of up to $12.5 million, plus a payment of $2,500 for each named Plaintiff. You or your own lawyer may appear at the hearing at your own expense.

For more information or a Claim Form:
1-800-876-5940 or
www.remingtonfirearmsclassactionsettlement.com

EXHIBIT W

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Kenisha Cross, *on behalf of herself and others similarly situated*,	)	Case No.: 1:15-cv-01270-RWS
Plaintiff,	)	
v.	)	
Wells Fargo Bank, N.A.,	)	
Defendant.	)	

PLAINTIFF'S UNOPPOSED MOTION
TO MODIFY THE PRELIMINARY APPROVAL ORDER

Plaintiff Kenisha Cross respectfully submits this motion to modify the Court's Order: (1) Conditionally Certifying a Settlement Class, (2) Preliminarily Approving Class Action Settlement, (3) Approving Notice Plan, and (4) Setting Final Approval Hearing (Dkt. No. 49) (the "Preliminary Approval Order"). In support hereof, Plaintiff states:

1. Pursuant to Fed. R. Civ. P. 23, this Court entered the Preliminary Approval Order on August 18, 2016.

2. Since that time, Class Counsel and Defendant have worked diligently with the Court-approved Settlement Administrator to: (1) identify, verify and process contact information for the persons associated with the 6,409,689 unique

cellular telephone numbers at issue, and who comprise the Settlement Class, (2) format and proof all documents required for the Court-approved notice program, including the postcard notice, long-form notice, Settlement website, and telephone hotline scripts, and (3) take all steps necessary to administer the Settlement.

3. Through this process, the Parties discovered two unanticipated issues. First, Defendant required additional time to identify and verify the names of the accountholders (including secondary and associated accountholders) associated with the 6,409,689 unique cellular telephone numbers that comprise the Settlement Class. Defendant provided a full list of the names, addresses, and phone numbers of Settlement Class members to the Settlement Administrator on September 6, 2016.

4. Second, through the final editing and formatting process, the postcard notice and claim form became longer than originally planned. As a result, when the Settlement Adminsitrator formatted the postcard notice and claim form for printing, the content exceeded the maximum number of reasonably-sized characters to fit on bi-fold postcard. Using the notice as approved would increase postage costs from $0.263 to $0.399 per notice, which, for a class of more than 6.4 million persons, would increase overall postage costs by more than $870,000—a cost that would have to be borne by the class.

5. To avoid this unnecessary charge, the Parties have therefore agreed to make modifications to the postcard notice to: (1) fit in the available space, and (2) add free reply postage, which the Parties anticipate will increase the number of valid claims. (The Settlement Administrator has informed the Parties that a free reply mail postage panel is also necessary to secure the lower postage charge.) Attached as **Exhibit A** is a revised postcard notice.

6. If the Court approves these changes, the Settlement Administrator can and will adhere to the previously set hard cap on costs. However, the Parties require a modest extension, as set forth below, to the notice deadline to meet the remaining deadlines in the original Prelimary Approval Order.

WHEREFORE, Plaintiff, by and through her attorneys, respectfully requests that the Court enter the Amended Preliminary Approval Order (attached as **Exhibit B** to this Motion):

1. Approving the revised postcard notice; and
2. Extending the deadline to provide class notice as follows:

October 17, 2016	Deadline to Provide Class Notice
November 16, 2016	Deadline for Plaintiff's Motion for Attorneys' Fees and Incentive Award
December 16, 2016	Deadline for Class Members to file Objections or submit Requests for Exclusion

EXHIBIT X

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

MAY 21 1997

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ________ DEPUTY CLERK

LEONEL GARZA, JR., ET AL., §
§
Plaintiffs, §
§
VS. § CIVIL ACTION NO. SA-93-CA-1082
§
SPORTING GOODS PROPERTIES, INC., §
formerly known as Remington §
Arms Company, Inc., ET AL., §
§
Defendants. §

COURT'S ADVISORY TO ALL GARZA SETTLEMENT CLASS MEMBERS

Numerous class members have contacted the Court expressing concern about the length of time between the filing of their claims and their receipt of checks from the $17.125 million settlement fund established in the case. The Court wishes to assure class members that it has been monitoring the claim valuation process and is well aware of the difficulties encountered in validating the claim forms which, the Court finds, resulted in unavoidable and uncontemplated delay.

A total of 496,451 claim forms were received representing 820,708 shotguns. The claims process has established that 477,376 forms were timely filed and listed at least one shotgun eligible for the settlement, for a total of 750,372 eligible shotguns. On May 12, 1997, the Court approved the list of claims validated for payment. The Court has sealed that list to protect the privacy of all class members.

Considering the enormous response, errors and delays were inevitable. Thousands of class members filed incomplete and/or inaccurate claim forms, and more than 65,000 claimants had to be contacted for additional information, creating significant delay. The Court finds that the additional time taken to obtain the missing or additional information needed to process and validate the claims was warranted.

The Court is also mindful that the delay of several months in processing claims is far less than class members would have faced had this action not settled. Because of this Court's enormous criminal docket and several hundred other civil cases, resolution of this dispute through trial and appellate litigation, as opposed to settlement, may have resolved the case in about the year 2005.

The Court's primary responsibility has been and is to bring this matter to closure properly and within the bounds of the rule of law. Every effort has been made to do so. In February 1996, this Court evaluated all aspects of the compromise settlement and found the settlement "fair, adequate and reasonable." That assessment still holds true, particularly compared to the alternative of many more years of litigation, in which class members may or may not have prevailed.

SIGNED and ENTERED this 21st day of May, 1997.

FRED BIERY
UNITED STATES DISTRICT JUDGE

151

EXHIBIT Y

Quantifying Online Advertising Fraud: Ad-Click Bots vs Humans

Adrian Neal, Sander Kouwenhoven
firstname.lastname@oxford-biochron.com

Oxford BioChronometrics SA

January 2015

Abstract

We present the results of research to determine the ratio of Ad-Clicks that are human initiated against those that are initiated by automated computer programmes, commonly known as ad-bots. The research was conducted over a 7 days period in early January 2015, using the advertising platforms of Google, Yahoo, LinkedIn and Facebook. The results showed that between 88 and 98 percent of all ad-clicks were by a bot of some kind, with over 10 per cent of these bots being of a highly advanced type, able to mimic human behaviour to an advanced extent, thus requiring highly advanced behavioural modelling to detect them.

1 Introduction

In May 2014, according to the Financial Times[1] newspaper, part of a Mercedes-Benz on-line advertising campaign was viewed more often by automated computer programmes than by human beings. It was estimated that only 43 per cent of the ad impressions were viewed by humans. Later, in December, Google made a similar announcement[3] when it stated that its research has showed that 56.1 per cent of ads served on the Internet are never "in view". From our own informal research using existing data from detecting spam-bots, it was thought that the level of bots involved in ad fraud might be considerably higher than was being generally reported. Consequently, we set out to conduct a controlled experiment to answer the following questions:-

1. What is the ratio between ad-clicks charged for, ad-clicks from bots and ad-clicks from humans, and
2. How many different types of ad-click bots can we observe.

2 Internet Bots - what we know

According to Wikipedia[4], an Internet bot, also known as web robot, WWW robot or simply bot, is a software application that runs automated tasks over the Internet. Typically, bots perform tasks that are both simple and structurally repetitive, at a much higher rate than would be possible for a human alone. The largest use of bots is in web spidering, in which an automated script fetches, analyses and files information from web servers at many times the speed of a human. Each server can have a file called robots.txt, containing rules for the spidering of that server that the bot is supposed to obey or be removed.

In addition to these uses, bots may also be implemented where a response speed faster than that of humans is required (e.g., gaming bots and auction-site robots) or less commonly in situations where the emulation of human activity is required, for example chat bots.

There has been a great deal of controversy about the use of bots in an automated trading function. Auction website eBay has been to court in an attempt to suppress a third-party company from using bots to traverse their site looking for bargains; this approach backfired on eBay and attracted the attention of further bots. The United Kingdom-based bet exchange Betfair saw such a large amount of traffic coming from bots they launched a WebService API aimed at bot programmers through which Betfair can actively manage bot interactions.

Bot farms are known to be used in online app stores, like the Apple App Store and Google Play, to manipulate positions or to increase positive ratings/reviews while another, more malicious use of bots is the coordination and operation of an automated attack on networked computers, such as a denial-of-service attack by a botnet.

Internet bots can also be used to commit click fraud and more recently have seen usage around Massively Multiplayer Online Roleplaying Games (MMORPG) as computer game bots. A spambot is an internet bot that attempts to spam large amounts of content on the Internet, usually adding advertising links.

Bots are also used to buy up good seats for concerts, particularly by ticket brokers who resell the tickets. Bots are employed against entertainment event-ticketing sites, like TicketMaster.com. The bots are used by ticket brokers to unfairly obtain the best seats for themselves while depriving the general public from also having a chance to obtain the good seats. The bot runs through the purchase process and obtains better seats by pulling as many seats back as it can.

Bots are often used in MMORPG to farm for resources that would otherwise take significant time or effort to obtain; this is a concern for most online in-game economies. Bots are also used to artificially increase views for YouTube videos. Bots are used to increase traffic counts on analytics reporting to extract money from advertisers. A study by comScore found that 54 percent of display ads shown in thousands of campaigns between May 2012 and February 2013 never appeared in front of a human being.

In 2012 reporter Percy Lipinski reported that he discovered millions of bot or botted or pinged views at CNN iReport. CNN iReport quietly removed millions of views from the account of so-called superstar iReporter Chris Morrow. A followup investigation lead to a story published on the citizen journalist platform, Allvoices[2]. It is not known if the ad revenue received by CNN from the fake views was ever returned to the advertisers.

3 Generally observed behaviour

All bots have a common set of properties. It can be said that a bot:-

- primarily exists, directly or indirectly, for economic gain,
- mimics, to any extent, the actions of a human using a computer,
- repeats such actions multiple times,
- initiates activity,
- executes only the minimum necessary actions to complete its task.

Bot behaviour, at the atomic level, falls into any one the following general classifications (*with examples of type*):-

1. Sends a single message (*Denial of Service Bots, Distributed Denial of Service Bots, Ad Click Bots, Ad Impression Bots*),
2. Sends a single message and waits for response (*Email Spam Bots, Ad Click Bots, Ad Impression Bots, Online Banking Bots*),
3. Sends multiple messages asynchronously (*Denial of Service Bots, Distributed Denial of Service Bots*),
4. Sends multiple messages asynchronously and waits for one or more responses (*Online Spam Bots*).

In behaviours 2 and 4, the sender address (i.e. the IP Address) must be valid for the response to be received (although not necessarily the point of origin), while behaviours 1 and 3 can accomplish their task without this prerequisite condition, making them considerably harder to detect their true point of origin.

4 How the research was conducted

In order to limit the level of non ad-platform bot activity being recorded, individual web pages were created specifically as the click target for the ad, one per ad platform. HTTP GET logging software was enabled for each of these web pages, recording each HTTP GET request that was made to the web server. Embedded on each of the target web pages was a JavaScript library, providing data collection functions to the web page. These functions were designed to record:-

1. Device-specific data, such as the type of web browser being used by the device, predetermined calculations to estimate CPU capabilities, hashing of HTML CANVAS elements to determine screen resolution, etc.

2. Network-specific data, such as the geo-location of the ip address, determining if the ip address was a proxy server, details of the DNS used, fixed-size data packet transmission latency tests, etc.

3. Behaviour-specific data, such as when and how the mouse and keyboard were used for devices that raise mouse and keyboard events, while for mobile devices, recording the data from the gyro, accelerometer and touch screen events.

Each of the three data sets that were being collected from the web page, were sent to their own separate web server using a variety of transmission methods. These were:-

1. Creating an empty SCRIPT Document Object Model Tag element, setting the SRC attribute to the URL of a collection script and parsing the collected data as a HTTP GET parameter.

2. Creating an new IMG Document Object Model Tag element, and again setting the SRC attribute to the URL of a collection script and parsing the collected data as a HTTP GET parameter.

3. Creating a Document Object Model HTTPRequest instance (also known as an AJAX request) to post the data to a collection script on the same server from where the web page was loaded.

Including the server HTTP GET request logs, this gave us in total four streams of data, which were relatively independent of each other, providing us with the ability to create much richer models of ad-bot behaviour and enabling us to create thoroughly-researched ad-bot classifications.

The advertising platforms used were Google, Yahoo, LinkedIn and Facebook. The ad-click budget allocated was around £100 (GBP) per platform, which was the maximum lifetime budget for the ad campaign and was used as fast as possible on each platform.

5 Types of ad-fraud bot detected

While observing the behaviour of bots, we were able to create six classifications of bot types, that we propose as a class of the Kouwenhoven-Neal Automated-Computer-Response Classification System and are described thus:-

Basic - (Ad-Clicks Only) Identified through the difference between the number of Ad-Clicks charged by a specific ad platform, and the number of consolidated HTTP GET requests received for the unique URL that was designated as the ad-click target for the ad campaign running on the ad platform.

Enhanced - Detected through the correlation of a HTTP GET request received by an ad-server for a specific ad, with the AJAX-transmitted record of the web-browser load event. If the recorded load event is inconsistent with the standard load event model, the HTTP GET was made by a bot.

Highly Enhanced - Detected through the use of advanced JavaScript processor metrics. A bot is evident if the client-side code execution is inconsistent with known code execution models.

Advanced - In an elementary attempt to impersonate human behaviour, the page is loaded into the web-browser, but the combination of the length of time that the page is supposedly viewed and the subsequent number and type of supposed user activities show very high levels of inconsistency with our models of normal human behaviour.

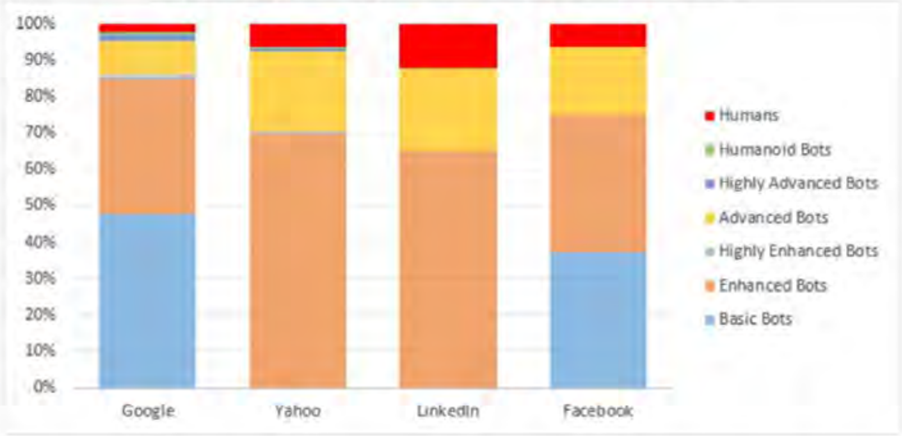
Highly Advanced - A significant attempt at impersonating human behaviour, the bot views the page for an amount of time that would seem reasonable. Both mouse and keyboard events are triggered and the page might be scrolled up or down. However, using cluster analysis, the pseudo randomness is highly detectable.

Humanoid - Detected only through deep behavioural analysis with particular emphasis on, for example, recorded mouse/touch movements, which may have been artificially created using algorithms such as Bezier curves, B-splines, etc., with attempts to subsequently introduce measures of random behaviour, mimicking natural variance.

6 Results

Our research found that at best, 88 percent of the ad-clicks were made by bots on the LinkedIn ad platform, while at worst, 98 percent were from bots on the Google ad platform.

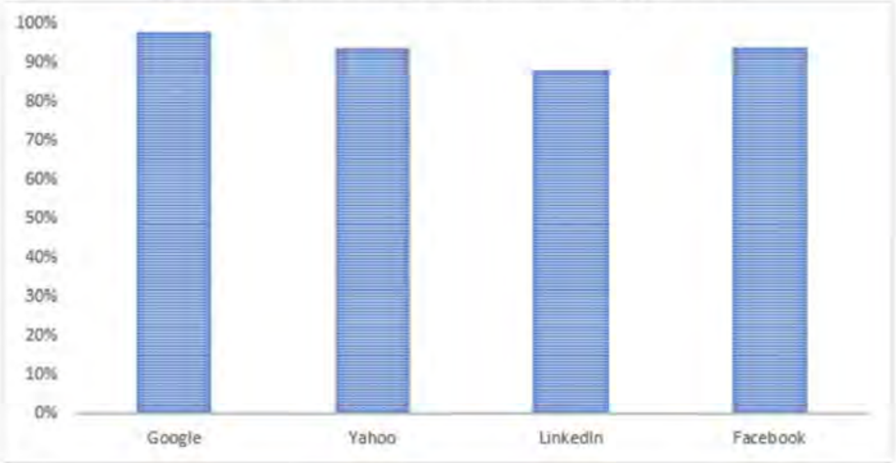
Figure 1: Ratio of Ad-Bot Clicks to Human Clicks



100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Google
Yahoo
LinkedIn
Facebook
Humans
Humanoid Bots
Highly Advanced Bots
Advanced Bots
Highly Enhanced Bots
Enhanced Bots
Basic Bots

There were no instances where we were not charged for an ad-click that was made by any type of bot.

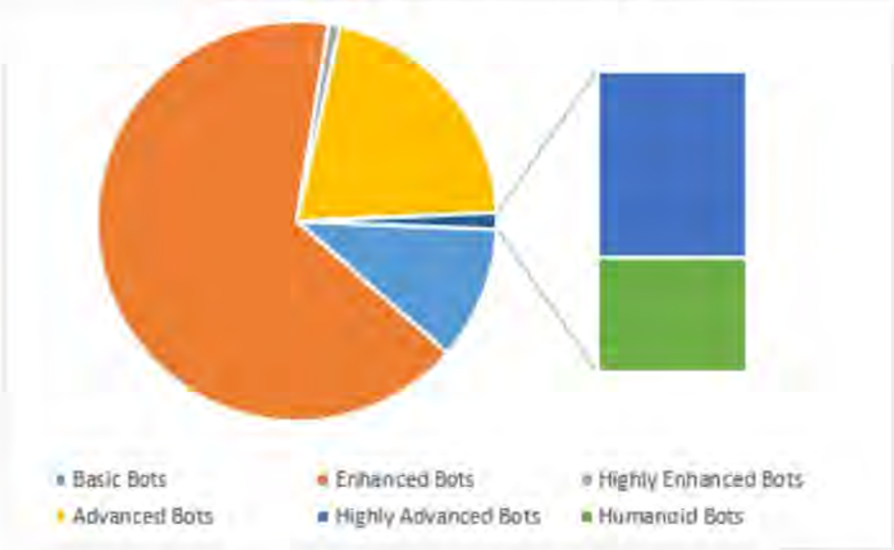
Figure 2: Prevalence of Overcharging of Ad-Clicks



100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Google
Yahoo
LinkedIn
Facebook

The prevalence of the different types of ad-bot was not entirely as expected. We expected that the majority of bots would be of the basic type and that they would diminish in a linear fashion as they became more advanced. This was not the case, as the Enhanced bot was by far the most widely observed, with the second being the Advanced bot.

Figure 3: Types and Prevalence of Ad-Bots



The limited sample size and duration of this test notwithstanding, these findings are in keeping with our general observations of bot activity through conventional bot detection software, which analyses Internet traffic as a whole on a post real-time basis.

7 Conclusion

There are perhaps few industries where overcharging on such a scale as demonstrated here would be tolerated, but until very recently, the ability to model both human and bot behaviour at the necessary level of complexity (and thus hold advertising platforms to account) was not commercially feasible.

However, with the rise of what is commonly referred to as Big Data, the ability to collect, store and process vast amounts of data in real-time at reasonable cost, while modeling complex human (and human-like) behaviour, has fundamentally changed the balance of power in the relationship between advertisers and the advertising platforms.

EXHIBIT Z

5 FACTORS of VIEWABILITY

Many of the ads served on the web never appear on a screen. But thanks to new advancements, we can now measure which digital ads were actually viewable—on screen. And as advertisers shift to paying for viewable instead of served impressions, it's important to understand what factors affect ad viewability. We explored this by conducting a study of our display advertising platforms, including Google and DoubleClick. Here we size up five factors of viewability—from page position to ad dimensions and more.

VIEWABLE IMPRESSIONS: A new industry standard

A display ad is considered viewable when **50% of an ad's pixels are in view** on the screen **for a minimum of one second,** as defined by the Media Rating Council.

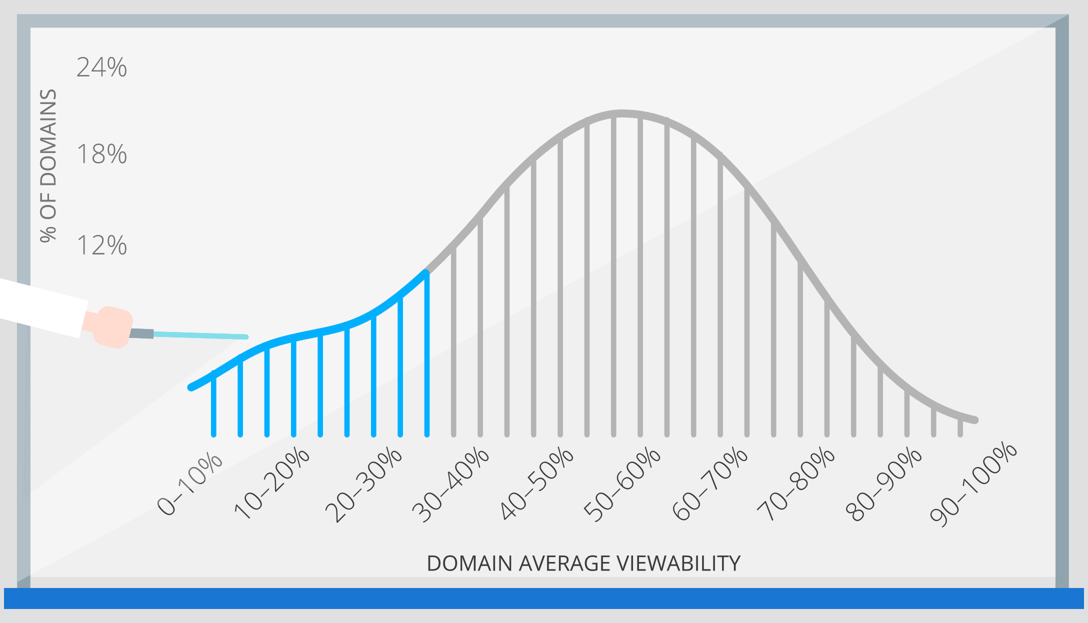
ONE SECOND

Viewability rate: Percentage of ads determined viewable out of the total number of ads measured.

1 State of publisher viewability

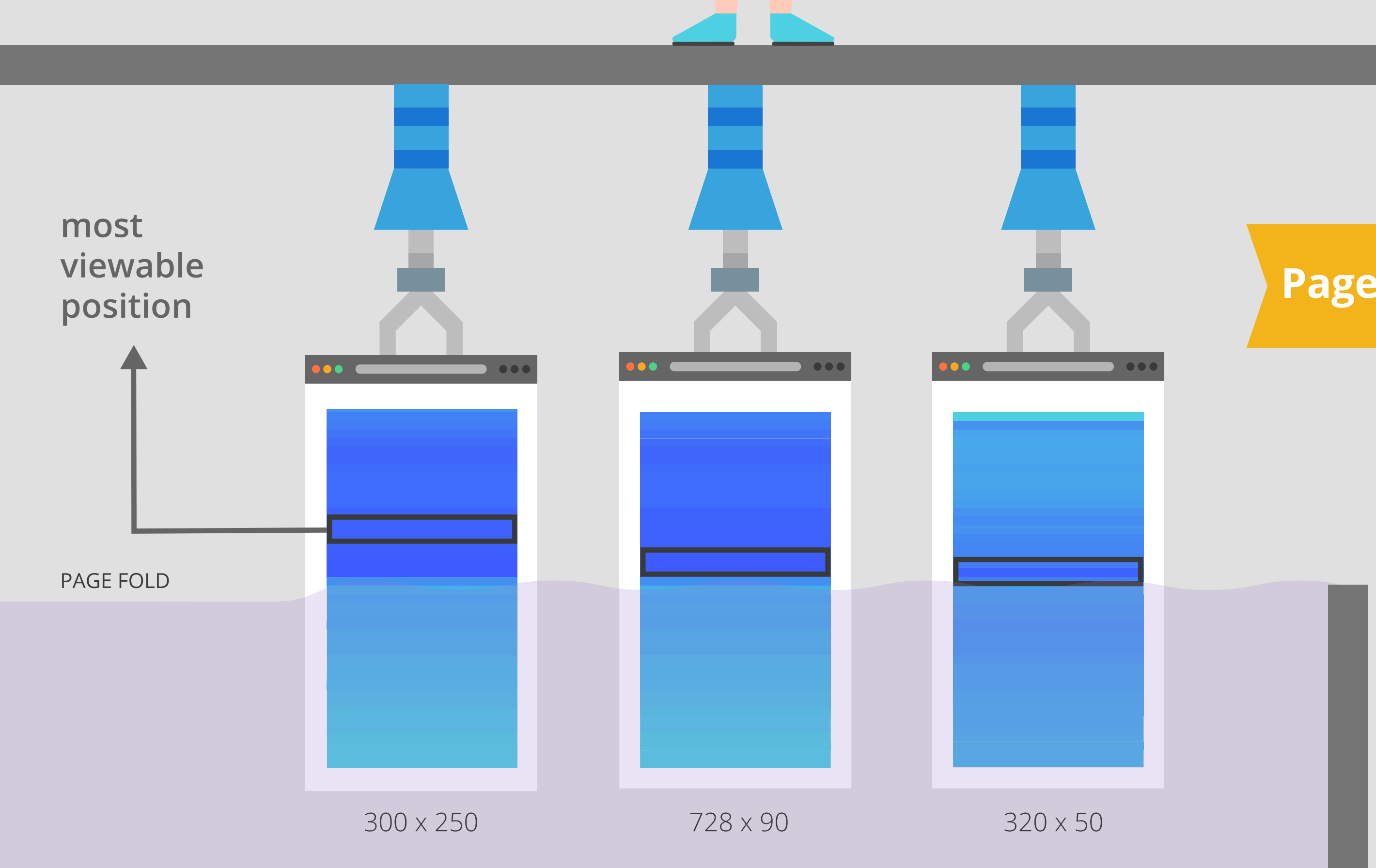
A small number of publishers are serving most of the non-viewable impressions; **56.1% of all impressions** are not seen, but the average **publisher viewability is 50.2%.**

Viewability Distribution Across Domains



% OF DOMAINS
24%
18%
12%
0–10%
10–20%
20–30%
30–40%
40–50%
50–60%
60–70%
70–80%
80–90%
90–100%
DOMAIN AVERAGE VIEWABILITY

2 Page position matters ...



most viewable position
PAGE FOLD
300 x 250
728 x 90
320 x 50

Most Viewable Position on Page

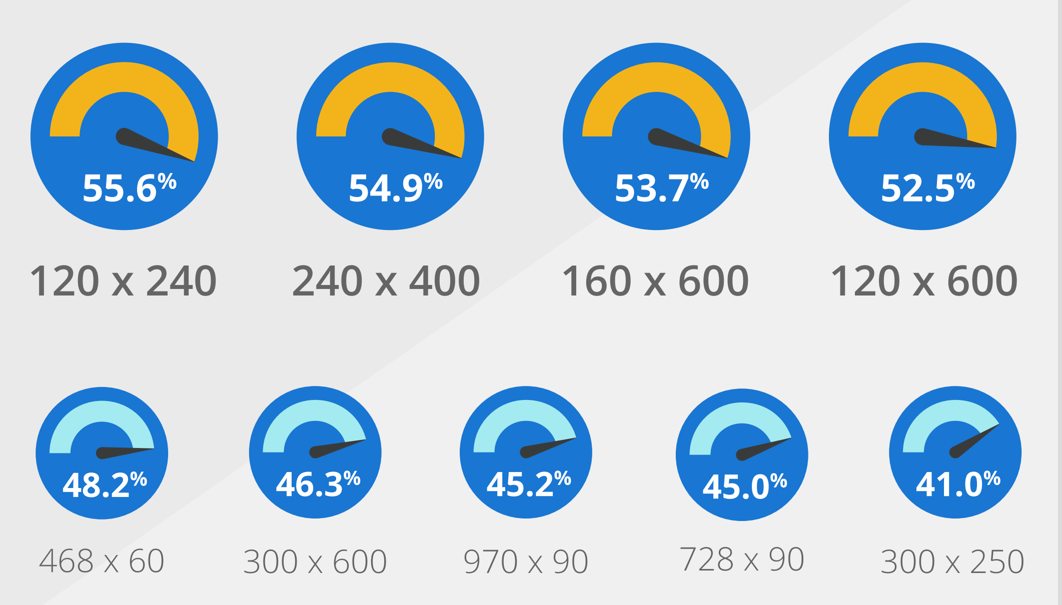
The most viewable position is **right above the fold,** not at the top of the page.

3 ... So does ad size

The most viewable ad sizes are **vertical units.** Not a surprise, since they stay on screen longer as users move around a page.

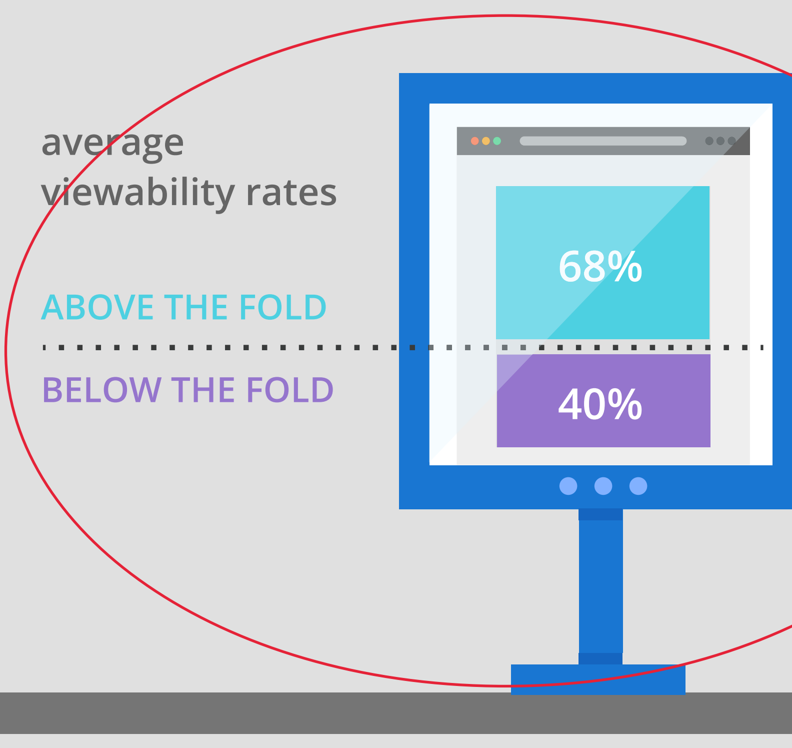
Popular ad size rates

Viewability Rates by Ad Size



55.6%
120 x 240
54.9%
240 x 400
53.7%
160 x 600
52.5%
120 x 600
48.2%
468 x 60
46.3%
300 x 600
45.2%
970 x 90
45.0%
728 x 90
41.0%
300 x 250

4 Above the fold ≠ always viewable



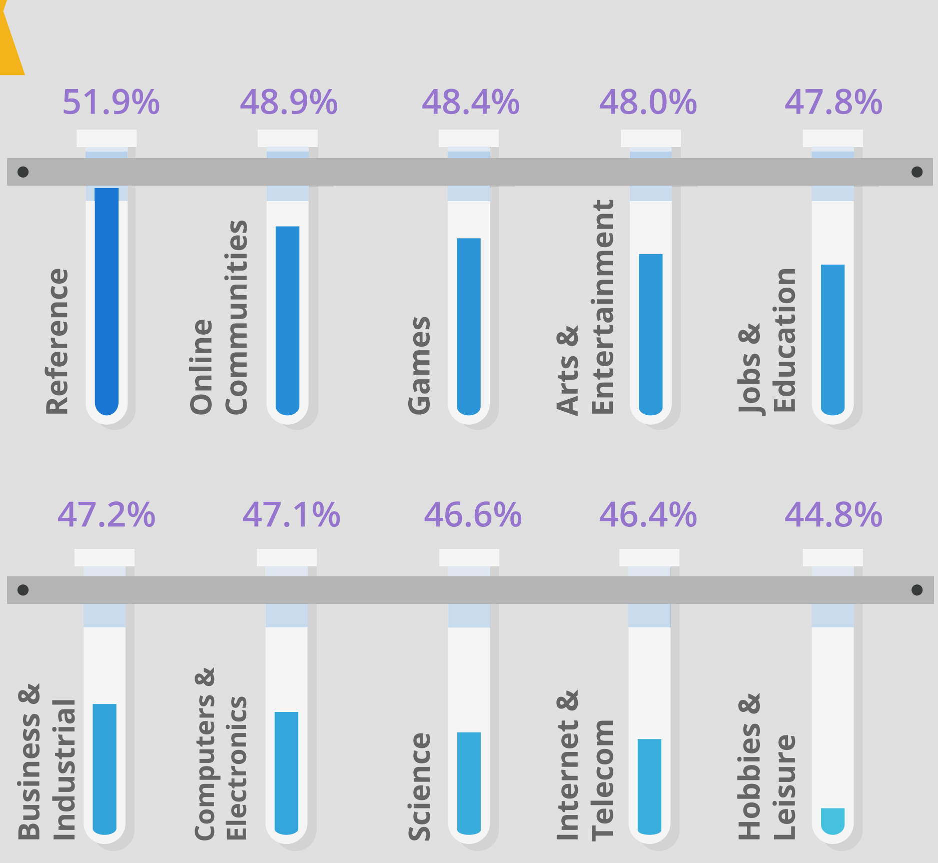
average viewability rates
ABOVE THE FOLD
BELOW THE FOLD
68%
40%

Page position isn't always the **best indicator of viewability.**

Not all above-the-fold impressions are viewable, while **many below-the-fold impressions are.**

5 Viewability varies across industries

While it ranges across content verticals, or industries, content that **holds a user's attention** has the highest viewability.



51.9%
Reference
48.9%
Online Communities
48.4%
Games
48.0%
Arts & Entertainment
47.8%
Jobs & Education
47.2%
Business & Industrial
47.1%
Computers & Electronics
46.6%
Science
46.4%
Internet & Telecom
44.8%
Hobbies & Leisure

Source: Google, "The Importance of Being Seen: Viewability Insights for Digital Marketers and Publishers" study, November 2014.

EXHIBIT AA

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Firearms Transaction Record Part I - Over-the-Counter

WARNING: You may not receive a firearm if prohibited by Federal or State law. The information you provide will be used to determine whether you are prohibited under law from receiving a firearm. Certain violations of the Gun Control Act, 18 U.S.C. §§921 *et. seq.*, are punishable by up to 10 years imprisonment and/or up to a $250,000 fine.

Prepare in original only. All entries must be handwritten in ink. Read the Notices, Instructions, and Definitions on this form. "PLEASE PRINT."

Transferor's Transaction Serial Number *(If any)*

Section A - Must Be Completed Personally By Transferee (Buyer)

1. Transferee's Full Name

Last Name	First Name	Middle Name *(If no middle name, state "NMN")*

2. Current Residence Address **(U.S. Postal abbreviations are acceptable. Cannot be a post office box.)**

Number and Street Address	City	County	State	ZIP Code

3. Place of Birth U.S. City and State -OR- Foreign Country	4. Height Ft. ____ In. ____	5. Weight *(Lbs.)*	6. Gender ☐ Male ☐ Female	7. Birth Date Month / Day / Year

8. Social Security Number *(**Optional**, but will help prevent misidentification)*	9. Unique Personal Identification Number *(UPIN)* if applicable *(See Instructions for Question 9.)*

10.a. Ethnicity
- ☐ Hispanic or Latino
- ☐ Not Hispanic or Latino

10.b. Race *(Check one or more boxes.)*
- ☐ American Indian or Alaska Native
- ☐ Black or African American
- ☐ White
- ☐ Asian
- ☐ Native Hawaiian or Other Pacific Islander

11. Answer questions 11.a. *(see exceptions)* through 11.l. and 12 *(if applicable)* by checking or marking ***"yes" or "no"*** in the boxes to the right of the questions.

Question	Yes	No
a. Are you the actual transferee/buyer of the firearm(s) listed on this form? **Warning: You are not the actual buyer if you are acquiring the firearm(s) on behalf of another person. If you are not the actual buyer, the dealer cannot transfer the firearm(s) to you.** *(See Instructions for Question 11.a.) Exception: **If you are picking up a repaired firearm(s)** for another person, you are **not** required to answer 11.a. and may proceed to question 11.b.*	☐	☐
b. Are you under indictment or information in any court for a **felony**, or any other crime, for which the judge could imprison you for more than one year? *(See Instructions for Question 11.b.)*	☐	☐
c. Have you ever been convicted in any court of a **felony**, or any other crime, for which the judge could have imprisoned you for more than one year, even if you received a shorter sentence including probation? *(See Instructions for Question 11.c.)*	☐	☐
d. Are you a fugitive from justice?	☐	☐
e. Are you an unlawful user of, or addicted to, marijuana or any depressant, stimulant, narcotic drug, or any other controlled substance?	☐	☐
f. Have you ever been adjudicated mentally defective *(which includes a determination by a court, board, commission, or other lawful authority that you are a danger to yourself or to others or are incompetent to manage your own affairs)* **OR** have you ever been committed to a mental institution? *(See Instructions for Question 11.f.)*	☐	☐
g. Have you been discharged from the Armed Forces under **dishonorable** conditions?	☐	☐
h. Are you subject to a court order restraining you from harassing, stalking, or threatening your child or an intimate partner or child of such partner? *(See Instructions for Question 11.h.)*	☐	☐
i. Have you ever been convicted in any court of a misdemeanor crime of domestic violence? *(See Instructions for Question 11.i.)*	☐	☐
j. Have you ever renounced your United States citizenship?	☐	☐
k. Are you an alien **illegally** in the United States?	☐	☐
l. Are you an alien admitted to the United States under a nonimmigrant visa? *(See Instructions for Question 11.l.) If you answered "no" to this question, do **NOT** respond to question 12 and proceed to question 13.*	☐	☐
12. If you are an alien admitted to the United States under a nonimmigrant visa, do you fall within any of the exceptions set forth in the instructions? **(If "yes," the licensee must complete question 20c.)** *(See Instructions for Question 12.) If question 11.l. is answered with a "no" response, **then do NOT respond** to question 12 and proceed to question 13.*	☐	☐

13. What is your State of residence *(if any)*? *(See Instructions for Question 13.)*	14. What is your country of citizenship? *(List/check more than one, if applicable. If you are a citizen of the United States, proceed to question 16.)* ☐ United States of America ☐ Other *(Specify)* ____	15. If you are not a citizen of the United States, what is your U.S.-issued alien number or admission number?

Note: Previous Editions Are Obsolete

Transferee (Buyer) Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

I certify that my answers to Section A are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. I understand that answering "yes" to question 11.a. if I am not the actual buyer is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I understand that a person who answers "yes" to any of the questions 11.b. through 11.k. is prohibited from purchasing or receiving a firearm. I understand that a person who answers "yes" to question 11.l. is prohibited from purchasing or receiving a firearm, unless the person also answers "Yes" to question 12. I also understand that making any false oral or written statement, or exhibiting any false or misrepresented identification with respect to this transaction, is a crime punishable as a felony under Federal law, and may also violate State and/or local law. I further understand that the repetitive purchase of firearms for the purpose of resale for livelihood and profit without a Federal firearms license is a violation of law *(See Instructions for Question 16).*

16. Transferee's/Buyer's Signature	17. Certification Date

Section B - Must Be Completed By Transferor (Seller)

18. Type of firearm(s) to be transferred *(check or mark all that apply)*:

☐ Handgun ☐ Long Gun *(rifles or shotguns)* ☐ Other Firearm *(Frame, Receiver, etc. See Instructions for Question 18.)*

19. If sale at a gun show or other qualifying event.

Name of Event ______________________

City, State ______________________

20a. Identification *(e.g., Virginia Driver's license (VA DL) or other valid government-issued photo identification.) (See Instructions for Question 20.a.)*

Issuing Authority and Type of Identification	Number on Identification	Expiration Date of Identification *(if any)* Month	Day	Year

20b. Alternate Documentation *(if driver's license or other identification document does not show current residence address) (See Instructions for Question 20.b.)*

20c. Aliens Admitted to the United States Under a Nonimmigrant Visa Must Provide: Type of documentation showing an exception to the nonimmigrant visa prohibition. *(See Instructions for Question 20.c.)*

Questions 21, 22, or 23 Must Be Completed Prior To The Transfer Of The Firearm(s) *(See Instructions for Questions 21, 22 and 23.)*

21a. Date the transferee's identifying information in Section A was transmitted to NICS or the appropriate State agency: *(Month/Day/Year)*

Month	Day	Year

21b. The NICS or State transaction number *(if provided)* was:

21c. The response initially provided by NICS or the appropriate State agency was:

☐ Proceed
☐ Denied
☐ Cancelled
☐ Delayed *[The firearm(s) may be transferred on ____________ (Missing Disposition Information date provided by NICS) if State law permits (optional)]*

21d. If initial NICS or State response was *"Delayed,"* the following response was received from NICS or the appropriate State agency:

☐ Proceed ____________ *(date)*
☐ Denied ____________ *(date)*
☐ Cancelled ____________ *(date)*
☐ No resolution was provided within 3 business days.

21e. *(Complete if applicable.)* After the firearm was transferred, the following response was received from NICS or the appropriate State agency on: ____________ *(date)*. ☐ Proceed ☐ Denied ☐ Cancelled

21f. The name and Brady identification number of the NICS examiner *(Optional)*

____________ *(name)* ____________ *(number)*

22. ☐ No NICS check was required because the transfer involved only National Firearms Act firearm(s). *(See Instructions for Question 22.)*

23. ☐ No NICS check was required because the buyer has a valid permit from the State where the transfer is to take place, which qualifies as an exemption to NICS *(See Instructions for Question 23.)*

Issuing State and Permit Type	Date of Issuance *(if any)*	Expiration Date *(if any)*	Permit Number *(if any)*

Section C - Must Be Completed Personally By Transferee (Buyer)

If the transfer of the firearm(s) takes place on a different day from the date that the transferee *(buyer)* signed Section A, the transferee must complete Section C immediately prior to the transfer of the firearm(s). *(See Instructions for Question 24 and 25.)*

I certify that my answers to the questions in Section A of this form are still true, correct and complete.

24. Transferee's/Buyer's Signature	**25. Recertification Date**

Transferor (Seller) Continue to Next Page
STAPLE IF PAGES BECOME SEPARATED

Section D - Must Be Completed By Transferor (Seller)

26. Manufacturer and/or Importer *(If the manufacturer and importer are different, the FFL should include both.)*	27. Model	28. Serial Number	29. Type *(pistol, revolver, rifle, shotgun, receiver, frame, etc.) (See instructions for question 29)*	30. Caliber or Gauge

30a. Total Number of Firearms *(Please handwrite by printing e.g., one, two, three, etc.* ***Do not use numerals.)***

30b. Is any part of this transaction a Pawn Redemption? ☐ Yes ☐ No

30c. For Use by FFL *(See Instructions for Question 30c.)*

Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

31. Trade/corporate name and address of transferor *(seller) (Hand stamp may be used.)*

32. Federal Firearms License Number *(Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)*

The Person Transferring The Firearm(s) Must Complete Questions 33-36. For Denied/Cancelled Transactions, The Person Who Completed Section B Must Complete Questions 33-35.

I certify that my answers in Sections B and D are true, correct, and complete. I have read and understand the Notices, Instructions, and Definitions on ATF Form 4473. On the basis of: (1) the statements in Section A (and Section C if the transfer does not occur on the day Section A was completed); (2) my verification of the identification noted in question 20a (and my reverification at the time of transfer *if the transfer does not occur on the day Section A was completed*); and (3) the information in the current State Laws and Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver, transport, or otherwise dispose of the firearm(s) listed on this form to the person identified in Section A.

33. Transferor's/Seller's Name ***(Please print)***	34. Transferor's/Seller's Signature	35. Transferor's/Seller's Title	36. Date Transferred

NOTICES, INSTRUCTIONS AND DEFINITIONS

Purpose of the Form: The information and certification on this form are designed so that a person licensed under 18 U.S.C. § 923 may determine if he or she may lawfully sell or deliver a firearm to the person identified in Section A, and to alert the buyer of certain restrictions on the receipt and possession of firearms. This form should only be used for sales or transfers where the seller is licensed under 18 U.S.C. § 923. The seller of a firearm must determine the lawfulness of the transaction and maintain proper records of the transaction. Consequently, the seller must be familiar with the provisions of 18 U.S.C. §§ 921-931 and the regulations in 27 CFR Part 478. In determining the lawfulness of the sale or delivery of a long gun *(rifle or shotgun)* to a resident of another State, the seller is presumed to know the applicable State laws and published ordinances in both the seller's State and the buyer's State.

After the seller has completed the firearms transaction, he or she must make the completed, original ATF Form 4473 *(which includes the Notices, General Instructions, and Definitions)*, and any supporting documents, part of his or her permanent records. Such Forms 4473 must be retained for at least 20 years. Filing may be chronological *(by date)*, alphabetical *(by name)*, or numerical *(by transaction serial number)*, as long as all of the seller's completed Forms 4473 are filed in the same manner. FORMS 4473 FOR DENIED/CANCELLED TRANSFERS MUST BE RETAINED: If the transfer of a firearm is denied/cancelled by NICS, or if for any other reason the transfer is not complete after a NICS check is initiated, the licensee must retain the ATF Form 4473 in his or her records for at least 5 years. Forms 4473 with respect to which a sale, delivery, or transfer did not take place shall be separately retained in alphabetical *(by name)* or chronological *(by date of transferee's certification)* order.

If you or the buyer discover that an ATF Form 4473 is incomplete or improperly completed after the firearm has been transferred, and you or the buyer wish to make a record of your discovery, then photocopy the inaccurate form and make any necessary additions or revisions to the photocopy. You only should make changes to Sections B and D. The buyer should only make changes to Sections A and C. Whoever made the changes should initial and date the changes. The corrected photocopy should be attached to the original Form 4473 and retained as part of your permanent records.

Over-the-Counter Transaction: The sale or other disposition of a firearm by a seller to a buyer, at the seller's licensed premises. This includes the sale or other disposition of a rifle or shotgun to a nonresident buyer on such premises.

State Laws and Published Ordinances: The publication (ATF P 5300.5) of State firearms laws and local ordinances ATF distributes to licensees.

Exportation of Firearms: The State or Commerce Departments may require you to obtain a license prior to export.

Section A

Question 1. Transferee's Full Name: The buyer must personally complete Section A of this form and certify *(sign)* that the answers are true, correct, and complete. However, if the buyer is unable to read and/or write, the answers *(other than the signature)* may be completed by another person, excluding the seller. Two persons *(other than the seller)* must then sign as witnesses to the buyer's answers and signature.

When the buyer of a firearm is a corporation, company, association, partnership, or other such business entity, an officer authorized to act on behalf of the business must complete Section A of the form with his or her personal information, sign Section A, and attach a written statement, executed under penalties of perjury, stating: (A) the firearm is being acquired for the use of and will be the property of that business entity and (B) the name and address of that business entity. If the buyer's name in question 1. is illegible, the seller must print the buyer's name above the name written by the buyer.

Question 2. Current Residence Address: U.S. Postal abbreviations are acceptable. *(e.g., St., Rd., Dr., PA, NC, etc.)*. Address cannot be a post office box. County and Parish are one and the same.

If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but does not reside at his or her permanent duty station, the buyer must list both his or her permanent duty station address and his or her residence address in response to question 2. If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 *(e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2)*.

Question 9. Unique Personal Identification Number (UPIN): For purchasers approved to have information maintained about them in the FBI NICS Voluntary Appeal File, NICS will provide them with a Unique Personal Identification Number, which the buyer should record in question 9. The licensee may be asked to provide the UPIN to NICS or the State.

Question 11.a. Actual Transferee/Buyer: For purposes of this form, you are the actual transferee/buyer if you are purchasing the firearm for yourself or otherwise acquiring the firearm for yourself *(e.g., redeeming the firearm from pawn/retrieving it from consignment, firearm raffle winner)*. You are also the actual transferee/buyer if you are legitimately purchasing the firearm as a gift for a third party. **ACTUAL TRANSFEREE/BUYER EXAMPLES:** Mr. Smith asks Mr. Jones to purchase a firearm for Mr. Smith. Mr. Smith gives Mr. Jones the money for the firearm. Mr. Jones is **NOT THE ACTUAL TRANSFEREE/BUYER** of the firearm and must answer **"NO"** to question 11.a. The licensee may not transfer the firearm to Mr. Jones. However, if Mr. Brown goes to buy a firearm with his own money to give to Mr. Black as a present, Mr. Brown is the actual transferee/buyer of the firearm and should answer **"YES"** to question 11.a. However, you may not transfer a firearm to any person you know or have reasonable cause to believe is prohibited under 18 U.S.C. § 922(g), (n), or (x). **Please note: EXCEPTION:** If you are picking up a repaired firearm(s) for another person, you are not required to answer 11.a. and may proceed to question 11.b.

Question 11.b. - 11.l. Definition of Prohibited Person: Generally, 18 U.S.C. § 922 prohibits the shipment, transportation, receipt, or possession in or affecting interstate commerce of a firearm by one who: has been convicted of a misdemeanor crime of domestic violence; has been convicted of a felony, or any other crime, punishable by imprisonment for a term exceeding one year ***(this does not include State misdemeanors punishable by imprisonment of two years or less)***; is a fugitive from justice; is an unlawful user of, or addicted to, marijuana or any depressant, stimulant, or narcotic drug, or any other controlled substance; has been adjudicated mentally defective or has been committed to a mental institution; has been discharged from the Armed Forces under dishonorable conditions; has renounced his or her U.S. citizenship; is an alien illegally in the United States or an alien admitted to the United States under a nonimmigrant visa; or is subject to certain restraining orders. Furthermore, section 922 prohibits the shipment, transportation, or receipt in or affecting interstate commerce of a firearm by one who is under indictment or information for a felony, or any other crime, punishable by imprisonment for a term exceeding one year.

Question 11.b. Under Indictment or Information or Convicted in any Court: An indictment, information, or conviction in any Federal, State, or local court. An information is a formal accusation of a crime verified by a prosecutor.

EXCEPTION to 11.c. and 11.i.: A person who has been convicted of a felony, or any other crime, for which the judge could have imprisoned the person for more than one year, or who has been convicted of a misdemeanor crime of domestic violence, is not prohibited from purchasing, receiving, or possessing a firearm if: (1) under the law of the jurisdiction where the conviction occurred, the person has been pardoned, the conviction has been expunged or set aside, or the person has had their civil rights *(the right to vote, sit on a jury, and hold public office)* taken away and later restored AND (2) the person is not prohibited by the law of the jurisdiction where the conviction occurred from receiving or possessing firearms. Persons subject to this exception should answer **"no"** to 11.c. or 11.i., as applicable.

Question 11.f. Adjudicated Mentally Defective: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) is a danger to himself or to others; or (2) lacks the mental capacity to contract or manage his own affairs. This term shall include: (1) a finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

Committed to a Mental Institution: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. Please also refer to Question 11.c. for the definition of a prohibited person.

***EXCEPTION to 11. f. NICS Improvement Amendments Act of 2007*:** A person who has been adjudicated as a mental defective or committed to a mental institution is not prohibited if: (1) the person was adjudicated or committed **by a department or agency of the Federal Government**, such as the United States Department of Veteran's Affairs ("VA") (as opposed to a State court, State board, or other lawful State authority); and (2) either: (a) the person's adjudication or commitment for mental incompetency was set-aside or expunged by the adjudicating/committing agency; (b) the person has been fully released or discharged from all mandatory treatment, supervision, or monitoring by the agency; or (c) the person was found by the agency to no longer suffer from the mental health condition that served as the basis of the initial adjudication. **Persons who fit this exception should answer "no" to Item 11.f.** This exception does not apply to any person who was adjudicated to be not guilty by reason of insanity, or based on lack of mental responsibility, or found incompetent to stand trial, in any criminal case or under the Uniform Code of Military Justice.

Question 11.h. Definition of Restraining Order: Under 18 U.S.C. § 922, firearms may not be sold to or received by persons subject to a court order that: (A) was issued after a hearing which the person received actual notice of and had an opportunity to participate in; (B) restrains such person from harassing, stalking, or threatening an intimate partner or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. An "intimate partner" of a person is: the spouse or former spouse of the person, the parent of a child of the person, or an individual who cohabitates or cohabitating with the person.

Question 11.i. Definition of Misdemeanor Crime of Domestic Violence: A Federal, State, local, or tribal offense that is a misdemeanor under Federal, State, or tribal law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with, or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The term includes all misdemeanors that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon *(e.g., assault and battery)*, if the offense is committed by one of the defined parties. *(See Exception to 11.c. and 11.i.)* A person who has been convicted of a misdemeanor crime of domestic violence also is not prohibited unless: (1) the person was represented by a lawyer or gave up the right to a lawyer; or (2) if the person was entitled to a jury, was tried by a jury, or gave up the right to a jury trial. Persons subject to this exception should answer **"no"** to 11.i.

Question 11.l. An alien admitted to the United States under a nonimmigrant visa includes, among others, persons visiting the United States temporarily for business or pleasure, persons studying in the United States who maintain a residence abroad, and certain temporary foreign workers. The definition does **NOT** include permanent resident aliens nor does it apply to nonimmigrant aliens admitted to the United States pursuant to either the Visa Waiver Program or to regulations otherwise exempting them from visa requirements.

An alien admitted to the United States under a nonimmigrant visa who responds "yes" to question 11.l. must provide a response to question 12 indicating whether he/she qualifies under an exception.

Question 12. Exceptions to the Nonimmigrant Alien Response: An alien admitted to the United States under a nonimmigrant visa is not prohibited from purchasing, receiving, or possessing a firearm if the alien: (1) is in possession of a hunting license or permit lawfully issued by the Federal Government, a State, or local government, or an Indian tribe federally recognized by the Bureau of Indian Affairs, which is valid and unexpired; (2) was admitted to the United States for lawful hunting or sporting purposes; (3) has received a waiver from the prohibition from the Attorney General of the United States; (4) is an official representative of a foreign government who is accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; (5) is en route to or from another country to which that alien is accredited; (6) is an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or (7) is a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

Persons subject to one of these exceptions should answer "yes" to questions 11.l. and 12 and provide documentation such as a copy of the hunting license or letter granting the waiver, which must be recorded in 20.c. If the transferee *(buyer)* answered "yes" to this question, the licensee must complete 20.c.

The seller should verify supporting documentation provided by the purchaser and must attach a copy of the provided documentation to this ATF Form 4473, Firearms Transaction Record.

Question 13. State of Residence: The State in which an individual resides. An individual resides in a State if he or she is present in a State with the intention of making a home in that State. If an individual is a member of the Armed Forces on active duty, his or her State of residence also is the State in which his or her permanent duty station is located.

If you are a U.S. citizen with two States of residence, you should list your current residence address in response to question 2 *(e.g., if you are buying a firearm while staying at your weekend home in State X, you should list your address in State X in response to question 2.)*

Question 16. Certification Definition of Engaged in the Business: Under 18 U.S.C. § 922 (a)(1), it is unlawful for a person to engage in the business of dealing in firearms without a license. A person is engaged in the business of dealing in firearms if he or she devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. A license is not required of a person who only makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his or her personal collection of firearms.

Section B

Question 18. Type of Firearm(s): Check all boxes that apply. "Other" refers to frames, receivers and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell, or National Firearms Act (NFA) firearms.

If a frame or receiver can only be made into a long gun *(rifle or shotgun)*, it is still a frame or receiver not a handgun or long gun. However, they still are "firearms" by definition, and subject to the same GCA limitations as any other firearms. See Section 921(a)(3)(b). 18 U.S.C. Section 922(b)(1) makes it unlawful for a licensee to sell any firearm other than a shotgun or rifle to any person under the age of 21. Since a frame or receiver for a firearm, to include one that can only be made into a long gun, is a "firearm other than a shotgun or rifle," it cannot be transferred to anyone under the age of 21. Also, note that multiple sales forms are not required for frames or receivers of any firearms, or pistol grip shotguns, since they are not "pistols or revolvers" under Section 923(g)(3)(a).

Question 19. Gun Shows: If sale at gun show or other qualifying event sponsored by any national, State, or local organization, as authorized by 27 CFR § 478.100, the seller must record the name of event and the location *(city and State)* of the sale in question 19.

Question 20a. Identification: List issuing authority *(e.g., State, County or Municipality)* and type of identification presented *(e.g., Virginia driver's license (VA DL), or other valid government-issued identification)*.

Know Your Customer: Before a licensee may sell or deliver a firearm to a nonlicensee, the licensee must establish the identity, place of residence, and age of the buyer. The buyer **must** provide a valid government-issued photo identification to the seller that contains the buyer's name, residence address, and date of birth. The licensee must record the type, identification number, and expiration date *(if any)* of the identification in question 20.a. A driver's license or an identification card issued by a State in place of a license is acceptable. Social Security cards are not acceptable because no address, date of birth, or photograph is shown on the cards. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license *(showing his name, date of birth, and photograph)* issued by State Y and another government-issued document *(such as a tax document)* from State X showing his residence address. If the buyer is a member of the Armed Forces on active duty acquiring a firearm in the State where his or her permanent duty station is located, but he or she has a driver's license from another State, you should list the buyer's military identification card and official orders showing where his or her permanent duty station is located in response to question 20.a.

Question 20.b. Alternate Documentation: Licensees may accept a combination of valid government-issued documents to satisfy the identification document requirements of the law. The required valid government-issued photo identification document bearing the name, photograph, and date of birth of transferee may be supplemented by another valid, government-issued document showing the transferee's residence address. This alternate documentation should be recorded in question 20.b., with issuing authority and type of identification presented. A combination of government-issued documents may be provided. For example, if a U.S. citizen has two States of residence and is trying to buy a handgun in State X, he may provide a driver's license *(showing his name, date of birth, and photograph)* issued by State Y and another government-issued document *(such as a tax document)* from State X showing his residence address.

Question 20c. Documentation for Aliens Admitted to the United States Under a Nonimmigrant Visa: See instructions for Question 11.l. Types of acceptable documents would include a valid hunting license lawfully issued in the United States or a letter from the U.S. Attorney General granting a waiver.

Question(s) 21, 22, 23, NICS BACKGROUND CHECKS: 18 U.S.C. § 922(t) requires that prior to transferring any firearm to an unlicensed person, a licensed importer, manufacturer, or dealer must first contact the National Instant Criminal Background Check System (NICS). NICS will advise the licensee whether the system finds any information that the purchaser is prohibited by law from possessing or receiving a firearm. For purposes of this form, contacts to NICS include contacts to State agencies designated to conduct NICS checks for the Federal Government. **WARNING:** Any seller who transfers a firearm to any person they know or have reasonable cause to believe is prohibited from receiving or possessing a firearm violates the law, even if the seller has complied with the background check requirements of the Brady law.

After the buyer has completed Section A of the form and the licensee has completed questions 18-20, and before transferring the firearm, the licensee must contact NICS *(read below for NICS check exceptions.)* However, the licensee should NOT contact NICS and should stop the transaction if: the buyer answers "no" to question 11.a.; the buyer answers "yes" to any question in 11.b.-11.l., unless the buyer only has answered "yes" to question 11.l. and also answers "yes" to question 12; or the buyer is unable to provide the documentation required by question 20.a, b, or c.

At the time that NICS is contacted, the licensee must record in question 21.a-c: the date of contact, the NICS *(or State)* transaction number, and the initial response provided by NICS or the State. The licensee may record the Missing Disposition Information (MDI) date in 21.c. that NICS provides for delayed transactions *(States do not provide this number)*. If the licensee receives a *"delayed"* response, before transferring the firearm, the licensee must record in question 21.d. any response later provided by NICS or the State or that no resolution was provided within 3 business days. If the licensee receives a response from NICS or the State after the firearm has been transferred, he or she must record this information in question 21.e. **Note:** States acting as points of contact for NICS checks may use terms other than *"proceed," "delayed," "cancelled,"* or *"denied."* In such cases, the licensee should check the box that corresponds to the State's response. Some States may not provide a transaction number for denials. However, if a firearm is transferred within the three business day period, a transaction number is required.

NICS Responses: If NICS provides a *"proceed"* response, the transaction may proceed. If NICS provides a *"cancelled"* response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a *"denied"* response, the seller is prohibited from transferring the firearm to the buyer. If NICS provides a *"delayed"* response, the seller is prohibited from transferring the firearm unless 3 business days have elapsed and, before the transfer, NICS or the State has not advised the seller that the buyer's receipt or possession of the firearm would be in violation of law. (See 27 CFR § 478.102(a) for an example of how to calculate 3 business days.) If NICS provides a *"delayed"* response, NICS also will provide a Missing Disposition Information (MDI) date that calculates the 3 business days and reflects when the firearm(s) can be transferred under Federal law. States may not provide an MDI date. *Please note State law may impose a waiting period on transferring firearms.*

EXCEPTIONS TO NICS CHECK: A NICS check is not required if the transfer qualifies for any of the exceptions in 27 CFR § 478.102(d). Generally these include: (a) transfers where the buyer has presented the licensee with a permit or license that allows the buyer to possess, acquire, or carry a firearm, and the permit has been recognized by ATF as a valid alternative to the NICS check requirement; (b) transfers of National Firearms Act weapons approved by ATF; or (c) transfers certified by ATF as exempt because compliance with the NICS check requirements is impracticable. See 27 CFR § 478.102(d) for a detailed explanation. If the transfer qualifies for one of these exceptions, the licensee must obtain the documentation required by 27 CFR § 478.131. A firearm must **not** be transferred to any buyer who fails to provide such documentation.

Section C

Question 24 and 25. Transfer on a Different Day and Recertification: If the transfer takes place on a different day from the date that the buyer signed Section A, the licensee must again check the photo identification of the buyer at the time of transfer, and the buyer must complete the recertification in Section C at the time of transfer.

Section D

Immediately prior to transferring the firearm, the seller must complete all of the questions in Section D. In addition to completing this form, the seller must report any multiple sale or other disposition of pistols or revolver on ATF Form 3310.4 (see 27 CFR § 478.126a).

Question(s) 26, 27, 28, 29 and 30, Firearm(s) Description: These blocks should be completed with the firearm(s) information. Firearms manufactured after 1968 should all be marked with a serial number. Should you acquire a firearm that is not marked with a serial number; you may answer question 28 with "NSN" (No Serial Number), "N/A" or "None."

If more than five firearms are involved in a transaction, the information required by Section D, questions 26-30, must be provided for the additional firearms on a separate sheet of paper, which must be attached to the ATF Form 4473 covering the transaction.

Types of firearms include: pistol, revolver, rifle, shotgun, receiver, frame and other firearms that are not either handguns or long guns (rifles or shotguns), such as firearms having a pistol grip that expel a shotgun shell or National Firearms Act (NFA) firearms.

Additional firearms purchases by the same buyer may not be added to the form after the seller has signed and dated it. A buyer who wishes to purchase additional firearms after the seller has signed and dated the form must complete a new ATF Form 4473. The seller must conduct a new NICS check.

Question 30c. This box is for the FFL's use in recording any information he or she finds necessary to conduct business.

Question 32 Federal Firearms License Number: Must contain at least the first three and last five digits of the FFL number, for instance X-XX-XXXXX.

Question 33-35 Transferor/Sellers Information: For "denied" and "cancelled" NICS transactions, the person who completed Section B must complete Section D, questions 33-35.

Privacy Act Information

Solicitation of this information is authorized under 18 U.S.C. § 923(g). Disclosure of the individual's Social Security number is voluntary. The number may be used to verify the buyer's identity.

Paperwork Reduction Act Notice

The information required on this form is in accordance with the Paperwork Reduction Act of 1995. The purpose of the information is to determine the eligibility of the transferee to receive firearms under Federal law. The information is subject to inspection by ATF officers and is required by 18 U.S.C. §§ 922 and 923.

The estimated average burden associated with this collection is 30 minutes per respondent or recordkeeper, depending on individual circumstances. Comments about the accuracy of this burden estimate and suggestions for reducing it should be directed to Reports Management Officer, Document Services Section, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Confidentiality is not assured.

EXHIBIT BB

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In re ITT EDUCATIONAL SERVICES, INC. SECURITIES LITIGATION (INDIANA)	CASE NO. 1:14-cv-01599-TWP-DML **ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE OF PROPOSED SETTLEMENT**

WHEREAS, a putative class action is pending before the Court entitled *In re ITT EDUCATIONAL SERVICES, INC. SECURITIES LITIGATION (INDIANA)*, Civil Action No. 1:14-cv-01599-TWP-DML, United States District Court for the Southern District of Indiana (the "Litigation");

WHEREAS, the Court has received the Stipulation of Settlement dated as of November 2, 2015 (the "Stipulation")[1], which has been entered into by Plaintiffs, on behalf of themselves and all Members of the Settlement Class, and Defendants, and the Court has reviewed the Stipulation and the Exhibits annexed thereto;

WHEREAS, the Settling Parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with the Stipulation which sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation;

[1] For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation, and the capitalized terms used herein shall have the same meaning as in the Stipulation.

d. Not later than seventy (70) days after the date of this Order, Plaintiffs' Lead Counsel shall cause to be served on Defendants' Counsel and filed with the Court proof, by affidavit or declaration, of such mailing, publishing and posting.

10. Nominees who purchased or otherwise acquired ITT Securities between February 26, 2013 and May 12, 2015, both dates inclusive, shall send the Notice and the Proof of Claim to all beneficial owners of such ITT Securities within fourteen (14) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within fourteen (14) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and the Proof of Claim to such beneficial owners. Lead Counsel shall, if requested, reimburse banks, brokerage houses, or other nominees solely for their reasonable out-of-pocket expenses incurred in providing the Notice to beneficial owners who are potential Members of the Settlement Class out of the Settlement Fund, which expenses would not have been incurred except for the sending of such Notice, subject to further order of this Court with respect to any dispute concerning such compensation.

11. Any Person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), to be received no later than twenty-eight (28) days prior to the Settlement Hearing. A Request for Exclusion must state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) each of the Person's purchases and sales of ITT Securities made during the Settlement Class Period, including the dates of purchase or sale, the number of shares/options purchased and/or sold, and the price paid or received per share for each such purchase or sale; and (c) a statement that the Person wishes to be excluded from the Settlement Class. All Requests for Exclusion must also be signed by the Person requesting exclusion. All

other theory of claim preclusion or issue preclusion or similar defense or counterclaim under U.S. federal or state law or foreign law.

23. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation. In such an event, the Settling Parties shall return to their positions as of July 14, 2015, the date this Action was stayed pending settlement discussions, without prejudice in any way.

24. Pending the Settlement Hearing, the Court stays all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation.

25. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

DATED: 11/4/2015

Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

EXHIBIT CC

A class action lawsuit has been settled. If you own certain **Remington firearms** you may be affected.
Click here for more information
remingtonfirearmsclassactionsettlement.com

EXHIBIT DD

REMINGTON MODEL 600 & 660

If you own a Remington Model 600 (including the Mohawk 600) or Model 660 rifle:

All Remington Model 600 and Model 660 rifles were manufactured with a bolt-lock mechanism and are subject to this bolt-lock Safety Modification Program. These models were discontinued in 1979. Please see Important Safety Notice regarding the 1979 recall below. If you participate in the current Safety Modification Program, your firearm will be cleaned and inspected for proper functioning by a qualified gunsmith. Once the condition of your firearm has been assessed, you will be notified of one of the following:

- Your rifle's trigger assembly is otherwise in good operating condition and the gunsmith will proceed to physically remove the bolt-lock feature so that your firearm can be loaded and unloaded while the safety remains in the "S" or "On Safe" position; or
- Your rifle's trigger assembly is found to be in an unsatisfactory or potentially unsafe operating condition because of any number of factors, including wear, alteration or maintenance. The entire trigger assembly will be replaced with a new factory trigger assembly, which does not incorporate a bolt-lock mechanism.

The cost, if any, to you for participating in the bolt-lock Safety Modification Program will depend upon whether your Model 600 or 660 rifle was previously repaired under a 1979 recall program.

IMPORTANT SAFETY NOTICE:

In 1979, Remington instituted a recall for Model 600 and 660 rifles made before February, 1975, because, under certain circumstances, the safety and trigger could be manipulated in a way that could result in an accidental discharge. Under the 1979 recall program, owners of the affected rifles could return their guns for installation of a new trigger assembly at no charge. Since 1979, thousands of the affected firearms have been serviced under the 1979 recall and received new trigger assemblies.

How can you tell if your Model 600 or 660 rifle was subject to the 1979 recall, and whether it was repaired as part of that program?

- Model 600 and 660 rifles - except those with a serial number beginning with an "A" before the serial number - were subject to the 1979 recall.
- Each Model 600 and 660 rifles repaired under the 1979 recall has a "V" (approximately 1/4 inch high) stamped on the left side of the trigger below the receiver line. These replacement trigger assemblies included the bolt-lock feature.

If you own a Model 600 or 660 rifle that was subject to the 1979 recall, does the current bolt-lock Safety Modification Program affect you?

- If your Model 600 or 660 rifle wlas subject to the 1979 recall but was never repaired as part of that recall, then a new trigger assembly without a bolt-lock feature will be installed. This change will be made at no cost to you.
- If your Model 600 or 660 rifle was repaired as part of the 1979 recall, or it was not subject to the 1979 recall, you may have the bolt-lock removed at a cost of $20, plus shipping and handling, plus tax. You will also receive a safety redemption certificate to complete and submit in order to receive a free blaze orange hat (one hat per certificate).

How to participate in the Safety Modification Program :

Complete the General Repair Form and send or deliver your firearm and the completed repair form to either:

Remington Arms Company, Inc. Ilion Firearms Plant Attention: BL Safety Program 14 Hoefler Avenue Ilion, NY 13357

Remington will bill or arrange for payment once your firearm is received and evaluated.

CAUTION: It is your responsibility to comply with all laws and regulations regarding transportation or shipping of your firearm. Absolutely no ammunition should be packaged with the firearm whether loaded in the firearm itself or included in the shipping container. The firearm should be transported only in a completely unloaded condition.

EXHIBIT EE

PRODUCT SAFETY WARNING AND RECALL NOTICE

Remington Arms Company, LLC ("Remington") is voluntarily recalling Remington Model 700™ and Model Seven™ rifles which were manufactured from May 1, 2006 through April 9, 2014 and which have an X-Mark Pro® ("XMP®") trigger. Rifles manufactured after April 9, 2014 are not subject to recall.

READ THE UNITED STATES RECALL NOTICE (/PDFS/XMPRECALL-NOTICE.PDF)

READ ABOUT THE INTERNATIONAL RECALL (/PDFS/INTL-RECALL-NOTICE.PDF)

INFORMACIÓN SOBRE EL RETIRO INTERNACIONAL DE PRODUCTOS (/PDFS/INFORMACION_SOBRE_EL_RETIRO_INTERNACIONAL_DE_PRODUCTOS.PDF)

SEE IF YOUR MODEL 700™ OR MODEL SEVEN™ RIFLE IS AFFECTED

If you own a Remington Model 700™ or Model Seven™ rifle with an X-Mark Pro® trigger, please enter your serial number below to determine if your rifle needs to be inspected as part of the recall:

Serial Number

CHECK NOW

YOUR FIREARM IS NOT AFFECTED BY THIS RECALL

Your rifle is not subject to the recall. Safe firearms handling is everyone's responsibility. The Ten Commandments of Firearms Safety should be etched in your memory. Let them govern your actions wherever and whenever you're involved with firearms. In the woods. On the range. Or in your home. Please take the time to review and understand these rules (http://www.remington.com/10commandments).

We apologize for this inconvenience. We know we disappointed you and this doesn't make up for that; but we'd like to offer you a **20%** discount to ShopRemingtonCountry.com (http://shopremingtoncountry.com/) . Use code **ROCSVC20** at checkout.

OFFER DETAILS: 20% off discount valid through December 31, 2016 with offer code ROCSVC20. Valid for internet orders only at www.remington.com/shop (http://www.remington.com/shop) shipped inside the U.S. Discount code not valid on sale or clearance items. Eligible on regular, full-price items only. Discount may not be combined with other offers or promotion codes. One redemption valid per customer. Discount cannot be used towards shipping and handling fees and/or taxes. Not valid for cash or cash equivalent or towards a previous purchase. Terms and conditions are subject to change at the discretion of Remington Arms Company, LLC. Offer limited to inventory in stock at time of purchase.

EXHIBIT FF

●●●○○ AT&T 10:19 AM 51%

remingtonfirearmsclassactionsettlement.com

SONICWALL Network Security Appliance

This site has been blocked by the network administrator.

URL: **http://remingtonfirearmsclassactionsettlement.com/...**

Block reason: **Forbidden Category "Weapons"**

If you believe the below web site is rated incorrectly click here.

EXHIBIT GG

BNA, INC.

CLASS ACTION LITIGATION

BNA Employee-Owned Since 1947

REPORT

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In November 2010, the Federal Judicial Center (FJC) issued two new tools—a notice checklist and a plain language guide—to help attorneys and judges create effective notices and notice plans. The Checklist provides overall guidance on notice and notice plan development, and provides guidance for improving class actions claims processes, writes class action notice expert Todd B. Hilsee in this BNA Insight. He analyzes the Checklist and Guide and suggests why the Checklist and Guide are essential to class action practice.

Analysis of the FJC's *2010 Judges' Class Action Notice and Claims Process Checklist and Guide*: A New Roadmap to Adequate Notice and Beyond

BY TODD B. HILSEE

In November 2010, the Federal Judicial Center (FJC) issued two new tools—a notice checklist and a plain language guide—to help attorneys and judges create effective notices and notice plans. The Checklist provides overall guidance on notice and notice plan development, and provides guidance for improving class actions claims processes. A graphical plain language notice Guide explains and highlights the important features of the FJC's previously-issued illustrative "plain language" notices.[1] The Checklist and Guide are available as one document, known as the *2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*, at the Federal Judicial Center's website.[2]

At the same time, the FJC updated its popular text, *Managing Class Action Litigation: A Pocket Guide for*

[1] In 2001-2003, the FJC created illustrative notice forms to demonstrate ways that "plain" language and graphic design can be used when drafting class action notices pursuant to Fed. R. Civ. 23(c)(2) requiring "clear, concise, easily understood language." *See* http://www.fjc.gov/public/home.nsf/pages/376, last visited January 25, 2010. The author of this article collaborated to write and design the illustrative notices with the FJC's Research Division staff: Thomas E. Willging, Shannon R. Wheatman, Ph.D., and Robert J. Niemic; and with Prof. Terri R. LeClercq, Univ. of Texas School of Law. The Research Division Director was James B. Eaglin.

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Judges, by issuing its Third Edition (2010), covering a broad gamut of issues that federal judges face when overseeing class action cases. The 2010 release ''includes an expanded treatment of the notice and claims processes.''[3]

The Checklist and Guide were developed under the leadership of FJC Director Hon. Barbara J. Rothstein, and were a joint initiative of the FJC's Education and Research divisions.[4]

This article will analyze the Checklist and Guide and suggest why the Checklist and Guide are essential to class action practice. It will focus on notice dissemination and other key aspects of the Checklist more than the somewhat self-explanatory ''Plain Language'' Guide, because notice content issues have been covered extensively in the past.[5] The opinions in this paper reflect those of the author, and do not necessarily reflect the opinions of the FJC or the other notice experts cited or who were reached for comment on the Checklist and Guide for this article.

A Basis for FJC Notice Guidance

The FJC develops and publishes such tools in furtherance of the Center's statutory mission to develop educational materials for the judicial branch. The FJC has provided extraordinary thought leadership in the area of due process and notice to class members. It is appropriate that the FJC expanded its notice guidance. Notice is critical because often millions of people are affected at once by a judge's decision in a class action case. c[6]

Revised Rule 23(c)(2) came about in 2003 because of the ''need to work unremittingly at the difficult task of communicating with class members.''[7] The illustrative notice forms do not provide guidance on the *whole* task of communicating, i.e., how to *disseminate* those notices. If a notice reaches only a small percentage of class members, a plain language notice cannot communicate with a large percentage the class. Such a notice effort cannot be said to represent the ''best notice practicable'' that Rule 23(c)(2) requires. Thus the Checklist and Guide provide ''best practices'' dissemination methods and planning guidance—borne out of actual class action practices that courts have sought and approved, and that leading experts have recommended, for many years.

Courts are increasingly aware, and have begun to accept, that class action claims rates today are persistently low.

Notice that does not reach class members does not afford them an opportunity to act on their rights, which in Rule 23(b)(3) actions include the right to opt out, and in the case of a settlement, the right to object to its terms or claim the benefits. Courts are increasingly aware, and have begun to accept, that class action claims rates today are persistently low.[8] Class actions that result in few class members receiving benefits, but lawyers seeking large fees, can result in public shame on the class action device and on the courts that bless them.[9] The FJC's Checklist and Guide also focus on claims processes, highlighting practical tips for courts to consider.

The FJC's Checklist comes amid heightened concerns about notice and claims issues, stemming from practical realities in today's class action practice.[10] Some 89 percent of notice approvals may occur not pursuant to classes being certified for trial, but in the context of settlement.[11] Both settling parties want the settlement approved. Neither party wants opt outs. In claims-made settlements, the defendant can minimize payments by seeking to minimize notice, and the plaintiffs' lawyers can negotiate ''clear sailing''[12] agreements on fee petitions regardless of class participation or actual payouts to the class.[13] Administrators are bidding for the settling parties notice business. Ironically, weaker notice averts objections that may draw the court's attention to the very weakness of a notice (or a settlement). Strong notice won't trigger claims for weak settlement benefits; but weak notice ensures a low claims rate.[14] Courts thus cannot rely on the traditional adversarial process during settlement to produce a notice plan that will achieve the best notice practicable. The FJC Checklist enlightens judges with best practices regardless of the parties' submissions.

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[2] *See* the Federal Judicial Center's website at http://www.fjc.gov/public/home.nsf/pages/376, last visited January 25, 2010.

[3] *Managing Class Action Litigation: A Pocket Guide for Judges*, Third Edition (2010), Hon. Barbara J. Rothstein and Thomas E. Willging, p. v, Preface.

[4] The FJC project team also included Senior Research Associate Thomas E. Willging assisted by the author of this article, Deputy Director John S. Cooke, Education Division Director Bruce M. Clarke, and Research Division Director James B. Eaglin. The FJC team was informed by many court-approved notices, notice plans, expert reports, scholarly articles, treatise materials, settlement agreements, and legal decisions.

[5] *See The Federal Judicial Center's Model Plain Language Class Action Notices: A New Tool for Practitioners and the Judiciary*, Todd B. Hilsee and Terri R. LeClercq (4 CLASS 182, 3/14/03); *See also The Plain Language Tool Kit for Class Action Notice*, Katherine Kinsella (3 CLASS 688, 10/25/02).

[6] ''Difficulties with the original rule. . . . Finally, the original rule did not squarely address itself to the question of the measures that might be taken during the course of the action to assure procedural fairness, particularly giving notice to members of the class. . . .'' Advisory Committee Notes on the 1966 Amendments accompanying Fed. R. Civ. P. 23.

[7] 2003 Advisory Committee notes accompanying Rule 23(c)(2).

[8] ''[W]hile response rates vary greatly depending on a variety of factors, [the claims administrator] has seen response rates range from less than five percent to more than twenty percent. Thus, the 5.5 percent response rate in this action is not outside the norm.'' *In re Initial Pub. Offering Secs. Litig.*, 2010 U.S. Dist. LEXIS 68702 (S.D.N.Y. July 7, 2010).

[9] *See e.g., Strong v. BellSouth Telcoms. Inc.*, 173 F.R.D. 167, 172 (W.D. La. 1997).

[10] *See e.g., True v. Am. Honda Motor Co.*, 2010 U.S. Dist. LEXIS 23545.

[11] A search of decisions on Lexis where courts make findings on the ''best notice practicable'' shows that only 11 percent do not involve settlement.

[12] Pocket Guide at page 20.

[13] Courts must still approve notices and fee petitions.

[14] *See Notice Expert Shines a Light on (Another) Bad Nationwide Class Action Notice,* Todd B. Hilsee, (9 CLASS 113, 2/8/08).

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The Checklist and Guide do not contravene Rule 23, nor do they require judges or practitioners to apply each point in the same way in each case. Naturally, the information for judges to consider in the Checklist and Guide explains the practice of notice beyond the textual requirements of Rule 23, otherwise educational materials could only restate Rule 23. The considerations provide ample room for practitioners to create solutions that fit the circumstances of each case.

The Importance of Reaching the Class

The FJC Checklist brings judicial attention to a longstanding practice that provides courts with a threshold test to help them determine whether a given notice plan constitutes the best notice practicable: Is the notice calculated to reach a high percentage of the class?[15] The idea behind ''reach'' calculations is to provide courts with an objective basis for assessing adequacy by revealing how many class members, out of the universe of class members, will receive an opportunity to learn about their rights through notice.

The measurement of ''reach'' (and its companion metric ''frequency''),[16] and the methodology to calculate reach, is a decades-old, heavily-relied upon practice brought from the advertising and media field. As early as 1922, it was noted, ''But no amount of advertising is any good if you do not reach your public. Choose the best medium and, your money is well spent.''[17] When the modern class action rule was adopted in 1966, reach and frequency were already considered ''traditional dimensions of media'' in the communications field,[18] and by 1968, reach and frequency methodology was well seeded in communications planning: ''To advertisers, numbers are getting more and more important and not just the dollar figures either. They want to know how many and what people will be reached with a message and how often.''[19] A study showed that between 90–100% of ad agency media directors use reach and frequency planning.[20] A leading industry text states that reach and frequency statistics *must* be used.[21] A more complete discussion of industry reliance on reach has been published in law reviews.[22]

In class actions, leading notice experts have stood behind reach and frequency for years. The author of this article first opined on reach to a federal court in the early 1990's,[23] and subsequently testified and submitted expert reports citing reach in large as well as smaller value cases.[24] Over the years, other leading notice experts have similarly provided such data to courts. For example, Jeanne C. Finegan of the Garden City Group opined in *In re Nortel Networks Corp. Securities Litigation*, ''The [Reach and Frequency] calculations are used by advertising and communications firms world-wide, and have been adopted by the courts to measure the percentage of a target class that was likely reached by a legal Notice program.''[25] Gina M. Intrepido-Bowden of Anlaytics/BMC Group opined in *Plubell v. Merck*, ''We utilize advertising methodologies that have been accepted by courts to help them objectively determine the adequacy of notice programs—that is, calculating, where possible, the percentage of class members who will be reached with notice through audience coverage analyses.''[26] Katherine Kinsella, of KinsellaMedia LLC, opined in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, ''Reach and frequency have become the standard measurements for quantifying the effectiveness of media-based class action notice programs.''[27]

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[15] See FJC Checklist at pages 1-4.

[16] ''Reach is a measurement of audience accumulation. Reach tells planners how many different prospects or households will see the ad at least once over any period of time the planner finds relevant. Reach is usually expressed as a percentage of a universe with whom a planner is trying to communicate. . . . Frequency is a companion statistic to reach. . . . Frequency is a measure of repetition, indicating to what extent audience members were exposed to the same vehicle or group of vehicles.'' *Advertising Media Planning*, Jack Z. Sissors & Roger B. Baron, p. 92-99 (6th ed. 2002).

[17] *New Zealand Truth*, April 15, 1922, p.6.

[18] ''The traditional dimensions of media—reach, frequency and continuity—must be expanded to include a fourth dimension—impact.'' *Advertising: The Media Need the Message*, *New York Times*, September 9, 1967.

[19] *Advertising: Dialing In on the Right Numbers for Radio Industry*, *New York Times*, May 17, 1968, p.76.

[20] *See generally* Peter B. Turk, *Effective Frequency Report: Its Use And Evaluation by Major Agency Media Department Executives*, 28 Journal of Advertising Research 56 (1988); Peggy J. Kreshel et al., *How Leading Advertising Agencies Perceive Effective Reach and Frequency*, 14 Journal of Advertising 32 (1985).

[21] ''In order to obtain this essential information, we must use the statistics known as reach and frequency.'' *Guide to Media Research*, *American Advertising Agency Association*, 25 (1987).

[22] *See Do You Really Want Me To Know My Rights? The Ethics Behind Due Process in Class Action Notice Is More than Just Plain Language: A Desire To Actually Inform*, Todd B. Hilsee, Shannon R. Wheatman and Gina M. Intrepido, 18 Georgetown Journal of Legal Ethics 1359, 1372 (2005).

[23] *See In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 548-549 (N.D. Ga. 1992), ''The reach of the publication program proposed by plaintiff was supported by Hilsee's testimony. The 143,000,000 figure was arrived at after elimination of duplication of readership among the print media by calculations performed using software available to Hilsee's industry for that purpose. Tr. at 95. The software is based on standard industry reach curves, mathematical models, population figures, and readership survey data.''

[24] *See Report of Notice Administrator Todd B. Hilsee on Analysis of Overall Effectiveness of Notice Plan*, Nov. 20, 1999, *In re Holocaust Victims Assets Litigation*, Case No. CV-96-4849, [Citing 90.4 percent reach of all Jewish adults worldwide, and country-by-country reach statistics: 93.8 percenta - 96.7 percent in key countries]. *See also Affidavit of Todd B. Hilsee on Completion of Settlement Notice Plan*, *In re Columbia/HCA Billing Practices Litigation*, MDL 1227, M.D. Tenn., May 28, 2003 [''low-value'' settlement, *i.e.*, no monetary payments for patient class members] ''Notice. . . effectively reached 70.3 percent of U.S. adults, and therefore, a similar percentage of Private Patient Class0 Members, as planned. Federal and state courts have relied on such data for many years, and my plans have regularly utilized such data to support media recommendations with statistical proof of audience coverage.''

[25] *Declaration of Jeanne C. Finegan, APR*, Doc. 69, *filed* Oct. 24, 2006, *In re Nortel Networks Corp. Securities Litigation*, Master File No. 05 MD 1659 (LAP), S.D.N.Y. [Reach Cited: 85.05- 95.35 percent]. *See also Declaration of Jeanne C. Finegan in Support of Motion for Final Approval of Class Action Settlements*, Doc. 333, Filed Oct. 15, 2010, *Stern v. ATT Mobility/Lozano v. ATT Wireless*, Case 2:05-cv-08842-CAS-CT, C.D. Cal.: ''[T]his comprehensive Notice Plan, as implemented, reached an estimated 78 percent of the potential Class Members in this case, or over 200,538,000 people in the United States. On average, potential class members had the opportunity to see this message 2.2 times. This program not only met, but exceeded the reach assumptions as described in my first Declaration and is the best notice practicable under the circumstances.''

[26] *Affidavit of Gina M. Intrepido-Bowden on Certification Notices and Notice Plan*, July 12, 2010, *Plubell v. Merck*, Case

Courts have recognized reach statistics when approving notice programs, even linking extraordinarily high reach percent to ''best notice practicable'' findings.[28] Reach standards are high. A Lexis study of published and reported decisions dating from 1993–2010, shows that when courts approve notice plans as constituting the ''best notice practicable,'' and they cite the reach statistics provided to them, the median reach is 87 percent and the average is 85.03percent.[29] All 36 published decisions found to meet those criteria were studied.[30] The cases reveal that courts received reach statistics as evidence from several different leading experts, including Hilsee, Finegan, and Kinsella. Together, these experts provided to the respective courts in the study cases reach statistics for a primary class demographic ranging from a low of 73 percent to a high of 96.2 percent. Also, public records reveal an exhibit showing 63 cases—large value and small value classes—in which reach statistics were cited to courts ranging from 70.3 percent to 99percent.[31] These findings, as well as other writings, are consistent with the FJC Checklist's slightly more conservative recommendation that a reach of between 70 percent and 95 percent is reasonable for a given class.[32]

Despite these experiences, often courts are not told what the reach calculation of the proposed notice program is, despite notice being as important, if not more so, than adequate representation.[33] This may be due to settlement dynamics, an oversight due to inexperience, lack of qualifications by an affiant, overburdened administrators, the complexity of a particular case, fear of disapproval, fear that more money than an administrator's client wishes to pay will be required to raise the reach to acceptable levels, or other factors. Courts are not always being provided with reach statistics unless and until an objection or collateral attack arises. By that time, the court has approved a notice regimen, and reissuing notice would be costly and, it is argued, confusing to class members.

Experts however, this author included, advise courts to receive reach calculations just as the FJC Checklist now advises.[34] For example, Katherine Kinsella writes in a 2010 textbook, ''The court must be satisfied *before* approving a notice program that an adequate percentage of the class will have an opportunity to see the notice.''[35]

When specific data has been lacking for a particular target group, experts have regularly calculated a knowable statistic: a reach percentage for a broader population that includes the target group, thereby giving the court the product of reliable principles and methods as an objective benchmark, avoiding speculative opinions

No. 04CV235817-01, Missouri Cir. Ct., Jackson Co. [citing reach of 79.8 percent]; *See also Affidavit of Gina M. Intrepido-Bowden on Class Certification Notice Plan*, Apr. 14, 2010, *Griffin v. Dell Canada Inc.*, No.: 07-CV-325223D2, Ont. Sup. Ct., [recommending supplemental notice if reach of initial phase does not exceed 70 percent].

[27] *Declaration Of Katherine Kinsella in Support of Motion for Final Approval of the Settlement with GlaxoSmithKline*, Doc. 4395, Filed June 22, 2007, *In Re Pharmaceutical Industry Average Wholesale Price Litigation*, Case 1:01-cv-12257-PBS, D. Mass [Reach cited: 78.8percent- 82.0percent]; *See also Declaration of Katherine Kinsella in Support of Defendants' Memorandum of Law*, Doc. 175, Filed Mar. 13, 2004, *Azizian v. Federated Dept. Stores*, Case 4:03-cv-03359-SBA, N.D. Cal.: ''The Notice Plan outlined above delivered the following estimated reach and frequency measurements of the targeted audience: 91.3 percent of Cosmetics Purchasers were reached with an average exposure frequency of 4.4 times.'' *See also Affidavit of Katherine Kinsella*, Doc. 83-1, *filed* Dec. 6, 2007, *In Re Conagra Peanut Butter Products Liability Litigation*, Civil Action No. 1:07-mdl-1845 TWT, N.D. Ga.: ''Utilizing these well-established, widely-accepted, Court-approved and updated techniques, augmented by specific information expected to be provided in discovery, the reach of our target audiences and the number of exposure opportunities to the notice information will be adequate and reasonable under the circumstances.''

[28] ''Potential class members must receive the 'best notice that is practicable under the circumstances.' . . . Here, that requirement was met because 99.9 percent of potential class members received a concise notice that described the settlement benefits and the claims that class members would be required to release.'' *Shaffer v. Cont'l Cas. Co.*, 362 Fed. Appx. 627, 631 (9th Cir. Cal. 2010).

[29] Study on file with FJC.

[30] The study decisions are: 158 F.R.D. 314, 322 n.12; 1995 U.S. Dist. Lexis 11532; 185 F.R.D. 82, 91; 2000 U.S. Dist. LEXIS 12275; 256 B.R. 377, 417; 205 F.R.D. 369, 382 n.19; 216 F.R.D. 197, 203; 356 S.C. 644, 661; 2004 Bankr. LEXIS 2519; 226 F.R.D. 207, 226; 231 F.R.D. 52, 64; 2005 WL 2230314, 13; 2005 U.S. Dist. LEXIS 27011; 355 F. Supp. 2d 148, 163; 2005 U.S. Dist. Lexis 7061; 228 F.R.D. 75, 85; 221 F.R.D. 221, 231; 448 F.3d 201, 207-208; 447 F. Supp. 2d 612, 617; 2006 U.S. Dist. LEXIS 51439; 240 F.R.D. 269, 293; 534 F. Supp. 2d 500, 509; 2007 U.S. Dist. Lexis 37863; 472 F. Supp. 2d 830, 841; 2008 U.S. Dist. Lexis 110411, 13-14; 2009 U.S. Dist. LEXIS 119870; 362 Fed. Appx. 627, 631; 2010 U.S. Dist. LEXIS 41892; 2010 U.S. Dist. LEXIS 29042, 3-4; 2010 U.S. Dist. LEXIS 3270; Additional decisions from same court in same MDL excluded so as not to inflate the statistics: 2004 U.S. Dist. LEXIS 26754; 2003 U.S. Dist. LEXIS 18129; 2004 U.S. Dist. LEXIS 11841; 2000 WL 1222042, 36 n.16; 434 F. Supp. 2d 323, 336; and 352 F. Supp. 2d 533, 540.

[31] *See Larson v. ATT Mobility*, Case No. 10-1285, App. Ct. 3rd Cir., *Supplemental Hilsee Aff.* ¶ 13 & Exh. 1, Appellants Joint Index at 4381, 4392-4393.

[32] Note: Hee has testified that it is reasonable to reach greater than 70 percent of a given class, *See e.g.*, *In re Ford Motor Co. E-350 Van Products Liability Litigation (No. II)*, Master File No. 1687, D.N.J., June 23, 2009; Also Note: Kinsella writes, ''There is no court-mandated reach or frequency standard'' citing examples ranging from 70 percent to 97.5 percent, *A Practitioner's Guide to Class Actions*, Marcy Hogan Greer, Chapter 20.A (by Katherine Kinsella), page 529, 2010, American Bar Association.

[33] ''Of critical importance to a faithful analysis of the *Mullane* decision is the fact that the Court concluded that any notice at all—let alone notice reasonably calculated to reach as many interested parties as possible—was required. . . . Were adequate representation sufficient to meet the requirements of the Due Process Clause, no notice would have been required.'' *Rethinking the Adequacy of Adequate Representation*, Patrick Woolley, 75 Texas Law Review 571 (1997).

[34] FJC Checklist at page 4.

[35] *A Practitioner's Guide to Class Actions*, Marcy Hogan Greer, Chapter 20.A (by Katherine Kinsella), page 527, 2010, American Bar Association (emphasis in original); *See also*, *High-Profile Product Recalls Need More Than the Bat Signal*, Jeanne C. Finegan, IRMI Online, July 2001, ''The media plan should include the definition of the target audience, what percentage of the audience was reached, with what level of frequency. . . .''

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as to the sufficiency of the reach without a calculation as a basis, i.e., the type of opinions that Federal Rule of Evidence 702 seeks to prohibit.[36]

U.S. and Canadian practice has shown that the reach of even difficult and widely dispersed ''target groups'' can indeed be calculated, e.g., Aboriginal people, including First Nations, Inuit and Métis spread throughout Canada, including remote areas.[37]

If You Can't Notify, Can You Certify?

It appears that the FJC is serious about discouraging weak settlement notice. The Checklist suggests in response to the question, ''Is it economically viable to adequately notify the class? If the cost to reach and inform a high percentage of the class is not justified by a proposed settlement, an optout class may not be appropriate. Inability to support proper notice may also be evidence that the settlement is weak.''[38] In other words, the question is raised: If the lawyers want to resolve the claims of absent and unaware class members, but the settlement can't afford to tell a large percentage of them about it, can all those class members be deemed bound by their silence?[39] Can the ''circumstances'' that Rule 23 refers to, include that a proposed settlement renders it too cost-inefficient to provide the minimum due process protection that the opt-out device affords?[40] Allowing Rule 23(b)(3) cases that are large enough to be worth a lawyer's time, but where the claims are small enough to justify not informing all but a few members of the class, about a resolution that anyone in the rest of the class may object to (but binds them all anyway), may devolve class action practice into something unintended.[41]

The Checklist raises the question of whether courts more regularly applying such long-standing metrics as reach analyses will jeopardize ''low value'' class action cases, where the cost to reach a high percentage of the class may be out of proportion to the value of the case.

The Checklist thus raises the question of whether courts more regularly applying such long-standing metrics as reach analyses will jeopardize ''low value'' class action cases, where the cost to reach a high percentage of the class may be out of proportion to the value of the case. Several considerations come to mind in this regard. Does ''low value'' mean the *settlement* that the parties jointly propose? If so, the logic is circular, because the lawyers negotiate a settlement, and based on the amount that they have proposed, they argue that it is therefore too costly to notify a large percentage of the absent class to ascertain their views on the lawyers' proposal. On the other hand, if ''low value'' means the aggregate damages had the case been tried, a party would have to explain why fewer people deserve to know about their rights simply depending on how large the claims are. Does ''low value'' mean the value of *each* class member's claim? If so, then one must argue why the very type of case that exemplifies the need for class actions, is the type of case that can proceed without a substantial percentage of the class learning of their rights. Rule 23 does not deny opt out rights for small-claims classes while affirming opt out rights only for large-claims classes.[42]

Arguments framing notice in a minimal sense have become familiar: *Due process only requires what is reasonable; actual notice is not required.* But one must take a close look back at *Phillips Petroleum v. Shutts.* Notice was understood to have been received by those it bound. Besides excluding 3,500 who chose to opt out, another 1,500 were *deemed opted out* because their notice was undeliverable.[43] Courts today regularly bind all Rule 23(b)(3) class members who have not opted out, even when their mailings remain undeliverable, or who were otherwise unreached with notice. However they do so under the premise that the notice was the ''best practicable'' in part because it was ''reasonably calculated''[44] to inform the class member, and because the party giving notice showed that it tried very hard to inform the beneficiaries of notice, i.e., the party giving it

[36] ''The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and not speculative before it can be admitted.'' Advisory Committee on Civil Rules Notes accompanying 2000 Amendment to Fed. R. Evid. 702.

[37] ''The Notice Plan estimated that Phase II efforts would reach 90.8 percent of Aboriginal people 25 years and older, an average of 5.1 times each. The Notice Plan estimated that Phase I and Phase II combined would reach 91.1 percent of Aboriginal people 25 years and older, an average of 6.3 times. As implemented, Phase II actually reached 95.1 percent of Aboriginal people 25 years and older, an average of 7.8 time each, and Phases I and II combined reached 95.3 percent of Aboriginal people 25 years and older an average of 9.1 times each.'' *Affidavit of Todd B. Hilsee on Completion of Phase II of Notice Programme and Adequacy of Phases I and II Combined*, Dec. 5, 2007, *In Re Residential Schools Class Action Litigation*, No. 00-CV-192059CP, Ontario Sup. Ct.

[38] FJC Checklist at page 1.

[39] In the aftermath of *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985), a prominent Rule 23 drafter once reminded readers that *Shutts* was premised on plaintiffs having ''received notice,'' and thus cautioned about lack of notice in the future: ''The serious theoretical issues of jurisdiction left open by *Shutts* include . . . notice that is not intelligible or not received. . . .'' Arthur R. Miller and David Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 Yale L.J. 1, 80 (1986).

[40] *Phillips Petroleum v. Shutts,* 472 U.S. 797, 812 (1985).

[41] ''It is a violation of due process for a judgment to be binding on a litigant . . . who has never had an opportunity to be heard.'' *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.7 (1979).

[42] To the contrary, *Shutts* dealt with 28,000 plaintiffs with ''minute amounts of interest on overdue natural gas royalty payments.'' William B. Rubenstein, *Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, 74 UMKC Law Review 709 (2006), discussing *Phillips Petroleum v. Shutts* 472 U.S. 797 (1985).

[43] *Phillips Petroleum v. Shutts,* 472 U.S. 797, 813 (1985).

[44] *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174 (U.S. 1974).

was "desirous of actually informing the absentee," if the recipient wasn't actually reached.[45]

The opt-out system is a blessing that was premised on a presumption of adequate notice, perhaps more than practitioners today recall. When Rule 23 was amended in 1966, U.S. legal scholars like Marvin Frankel had trouble with the idea of binding absent class members who took no action, especially those who received only constructive notice.[46]

In practice, it has been hard to win an argument that suggests it is too expensive to notify class members properly ever since *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974).[47] A class that can't be properly notified may not be manageable.[48]

Suggesting, as the Checklist does, that judges look for readily available reach statistics, perhaps using their own experts,[49] might be said, in settlement situations, to go beyond Rule 23(e), which does not articulate a "best practicable" standard, but rather a "reasonable manner" standard.[50] As the argument will go, notice under Rule 23(e) need not be as stringent as under Rule 23(c). The problems with this suggestion are three-fold. First, notice issued pursuant to a settlement is commonly the first notice issued to the class at all,[51] so in practice a notice under 23(e) must *also* comport with 23(c) at the same time. Second, even in the rare instances where a settlement notice under 23(e) comes after notice and opt-out has been given under 23(c), the court may refuse to approve a settlement unless a new opt-out opportunity is afforded,[52] thus injecting a circumstance that gave rise to the best practicable requirement in 23(c)(2). Thirdly, a settlement notice typically requires class members to take an action to participate in the settlement, i.e., filing a claim form, meaning in those very common situations, that notice should be as effective under 23(e) as under 23(c).[53]

As to the use of court experts, perhaps the FJC recognized that Fed. R. Evid. 706 already grants courts the power to appoint experts, and that consideration can be given to utilizing that authority to ensure adequate notice in today's class action atmosphere.

The Checklist Covers an Array of Related Issues

The Checklist may prove useful in other areas of class certification decisionmaking. For example, it illuminates the communications issue inherent in "ascertainability." Ascertainability is a test not present in the "text" of Rule 23, but a class must be "readily identifiable, such that the court can determine who is in the class."[54] The Checklist states, "Will unknown class members understand that they are included? If a well-written notice will leave class members in doubt as to whether they are included, consider whether the class definition, or the class certification, is appropriate."[55] For example, a class definition that must communicate a "state of mind" would not allow class members, or the court, to objectively know whether they are included.[56]

The Checklist may prove useful in other areas of class certification decisionmaking. For example, it illuminates the communications issue inherent in "ascertainability."

The Checklist will also help judges look at claims process issues to ensure that variables of inconvenience and burdensomeness are not injected into the already difficult effort to elicit responses from class members.

[45] "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 315 (1950). Miller and Crump pointed out that "the requirement that notice be 'received' is followed, in the [Shutts] Court's opinion, by a statement that the notice must be 'reasonably calculated' to reach the claimant and by citation to the *Mullane* and *Eisen* cases, which do not require actual receipt." Arthur R. Miller and David Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 Yale L.J. 1, 19 (1986). It is worth noting that modern "reach" methodology focuses on "opportunity" and does not necessitate actual receipt by class members.

[46] "To a generation raised on *Pennoyer v. Neff*, it is a rather heady and disturbing idea to be told that people in faraway places who receive a letter or are 'described' in a newspaper 'notice' which does not come to their attention are exposed to a binding judgment unless they take some affirmative action to exclude themselves." Marvin E. Frankel, *Some Preliminary Observations Concerning Civil Rule 23*, 43 F.R.D. 39, 45 (1967). Note: The FJC Checklist deals with how to design notices to ensure they "come to the attention" of readers (FJC Checklist at page 1 and 5).

[47] "There is nothing in Rule 23 to suggest that the notice requirements can be tailored to fit the pocketbooks of particular plaintiffs." *Eisen* at 176.

[48] Fed. R. Civ. P. 23 (b)(3)(D): "The matters pertinent to the findings include. . . the difficulties likely to be encountered in the management of a class action." *See also In re Vivendi Universal S.A. Sec. Litig.*, 242 F.R.D. 76, 114 (S.D.N.Y. 2007) ("In response to defendants' manageability concerns, plaintiffs have filed a comprehensive affidavit [including] . . . publication notice in appropriate multi-national media to reach, in combination with direct mailings, a high percentage of the shareholders in each country").

[49] FJC Checklist at page 2.

[50] "The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise." Fed. R. Civ. P. 23(e)(1)(B).

[51] *See* footnote 11.

[52] Fed. R. Civ. P. 23(e)(3).

[53] The Advisory Committee on Civil Rules clarified the meaning of "reasonable manner" under Rule 23(e) in the accompanying notes: "Reasonable settlement notice may require individual notice in the manner required by Rule 23(c)(2)(B) for certification notice to a Rule 23(b)(3) class. Individual notice is appropriate, for example, if class members are required to take action—such as filing claims—to participate in the judgment, or if the court orders a settlement opt-out opportunity under Rule 23(e)(3)."

[54] *See Charrons v. Pinnacle Group NY LLC*, 269 F.R.D. 221, 229 (S.D.N.Y. 2010).

[55] FJC Checklist at page 1.

[56] This is consistent with the FJC's Manual for Complex Litigation, which states, "Because individual class members must receive the best notice practicable and have an opportunity to opt out . . . . An identifiable class exists if its members can be ascertained by reference to objective criteria. The order defining the class should avoid subjective standards (e.g., a plaintiff's state of mind) or terms that depend on resolution of the merits (e.g., persons who were discriminated against)." *Manual for Complex Litigation*, Fourth, § 21.222.

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The Checklist advises, "Are all of the rights and options easy to act upon? There should be no unnecessary hurdles that make it difficult for class members to exercise their rights to opt out, object, submit a claim, or make an appearance."[57] The Checklist provides almost a full page of detailed questions and suggestions in this regard.[58]

The Checklist Recognizes That There Is More Than One Approach

In several places, the Checklist recognizes that there is more than one approach to effective notice for a particular case. For example, while cautioning that e-mail does not provide the same delivery and readership assurances that postal mail does,[59] "[Postal] mailforwarding services reach movers, and the influx of 'SPAM' e-mail messages can cause valid e-mails to go unread," the Checklist does not preclude the use of e-mail notice, especially where class members already interact with the defendant via e-mail: "If e-mail will be used—*e.g.*, to active e-mail addresses the defendant currently uses to communicate with class members—be careful to require sophisticated design of the subject line, the sender, and the body of the message, to overcome SPAM filters and ensure readership."[60] Recommendations to enhance the design features of such a notice often do not cost one penny more, and greatly enhance reach and readership.

Notably, the Checklist makes no recommendation to spend more on notice than has been spent in the past. In fact, the Checklist advises, "Consider the balance between cost efficiency and effectiveness. A smaller publication notice will save money, but too small and it will not afford room for a noticeable headline, will not fit necessary information, and will not be readable if using fine print."[61] Of course, the cost to properly reach a class may be greater than laypeople perceive. If one expects to buy a new car for $1,000 and finds out that an average new car will cost more than 10 times that amount, are cars outrageously priced, or is the buyer ignorant?

Practitioners and Experts Weigh in on the FJC Checklist and Guide

While advocates and experts will appropriately debate particular points, or decide which methods work for particular cases, the FJC has published something consistent with what courts have approved and what experts and practitioners have cited. It appears that the Checklist will bolster the practice of notice and give some protection from today's "race to the bottom."

When reached for this article, Jeanne C. Finegan, the notice expert and senior vice president with the Garden City Group Inc., noted, "The FJC Checklist and Guide is a great double check for practitioners to make sure that all critical elements of a notice program are buttoned up. It really brings to the forefront, the importance of making sure that your notices are written in plain language, that they have all the elements required by Rule 23, and most importantly that notice is carefully designed to reach those who might be affected by a given action."[62]

Another notice expert, Gina M. Intrepido-Bowden, managing director, Legal Notice for BMC Group/Analytics Inc., stated, "The FJC's Notice Checklist and Plain Language Guide is an extremely useful tool for the class action community. We distribute it at our Legal Notice Ethics CLE presentations. It supports the message we are communicating, that is, the importance of reaching a significant percentage of class members with a plain language message that will be noticed and understood."

Anya Verkhovskaya, senior EVP and COO of A.B. Data Ltd. Class Action Administration, remarked, "The FJC has issued a concise and straightforward means for courts to effectively analyze proposed notice and claims processes. We are pleased to see a Checklist like this being promulgated for use by the judges in the cases we administer. This will undoubtedly yield a faster path to a final outcome and increased efficiency overall."

The Checklist has already been the subject of position papers published for clients of defense law firms. One firm published a piece articulating a view that the "recommendations about the scope and expense of notice appear to go beyond the textual requirements of Fed. R. Civ. P. 23(c)(2)(B) and 23(e)(2)," and suggesting that "Settling parties should be aware of the Checklist and prepared to explain both its tension with the text of Rule 23 and why, under the particular circumstances of their cases, rigid application of the Checklist would not be appropriate."[63] Another firm published on its blog, "This guide ought to be required reading for corporate counsel and class action defense counsel, for Judges are apt to utilize this resource on a going-forward basis when reviewing and passing upon certification orders relative to notices to a class."[64]

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[57] FJC Checklist at page 1.

[58] FJC Checklist at page 6.

[59] A recent Ohio appeals court decision makes this point regarding a national class action. "The problems of communication by e-mail are well-known. . . . Consumers change e-mail addresses frequently, in some instances more frequently than they move. Often there is no system of forwarding for e-mail." *West v. Carfax*, 2009 WL 5064143 (Ohio App. 11 Dist.) (citing the author of this article who appeared as an expert, and Jean Braucher, *Rent-Seeking and Risk-Fixing in the New Statutory Law of Electronic Commerce: Difficulties in Moving Consumer Protection Online*, 2001 Wisconsin Law Review 527, 540.

[60] FJC Checklist at page 3.

[61] FJC Checklist at page 6.

[62] Ms. Finegan also notes that "a qualified expert needs to employ and cite all research that will be included in his or her findings. Importantly, it focuses attention back to Fed. R. Evid. 702, governing the admissibility of expert testimony, which now requires that such testimony be 'based upon sufficient facts or data,' that it be 'the product of reliable principles and methods,' and that the expert 'appl[y] the principles and methods reliably to the facts of the case.' She points out that a legal notice expert must use tools, calculations and industry-accepted, reasonably relied upon research . . . no speculation . . . . The Pocket piece is really a reminder that the expert can't speculate, or take shortcuts in reporting findings."

[63] *Federal Judicial Center Issues "Class Action Notice Checklist" With Problematic Positions*, Published by Debevoise & Plimpton LLP, January 13, 2011, *See* http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=858c79e9-40e1-4568-a9a4-a1793c7d0b50, last visited January 30, 2011.

[64] *The Federal Judicial Center's New Forms For Class Action Notices*, Workplace Class Action Litigation, Published by Seyfarth Shaw LLP, December 13, 2010. *See* http://www.workplaceclassaction.com/rule-23-issues/the-federal-

The Checklist and Guide has already been cited by a legal expert, Prof. Geoffrey C. Hazard Jr., in the *In re: Oil Spill* litigation: ''The importance of ensuring clear and accurate communications with class members has been of ongoing concern to the federal judiciary, having its most frequent expression in judicial insistence on and refinement of standards for the format and content of class action notices and other judicially-approved communications with class members. A contemporary example of these standards is the Federal Judicial Center's recent publication of its *2010 Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide*. . . . This FJC Guide supplements the [*Manual for Complex Litigation] 4th* as an additional source of guidance, information, and standards that judges may apply to test the fairness, accuracy, and completeness not only of class notices that are submitted for their approval, but other communications by or on behalf of the parties before them with putative class members.''[65]

Parties should be prepared to answer the questions that judges will have on the importance and proper scope of notice in particular cases, and debate the ease or difficulty with which claims procedures can or should be set up. Debate will be fostered, including by courts now with a roadmap in front of them, prompting questions courts may pose to practitioners on issues that may not have otherwise been brought to their attention or spring from the record before them. Certainly the FJC should continue to update the Checklist as trends emerge. But courts have now been enabled with class action notice ''best practices.'' This can only result in better outcomes for class members and for the courts that protect their interests, as well as greater protection for parties through lasting court judgments.[66]

Todd B. Hilsee, of The Hilsee Group LLC, is a court-recognized class notice expert who speaks and writes on achieving due process through notice. He assisted the Federal Judicial Center on a *pro bono* basis in development of the tools discussed in this article. He can be reached at thilsee@hilseegroup.com.

judicial-centers-new-forms-for-class-action-notices/, last visited January 30, 2011.

[65] *Affidavit of Geoffrey C. Hazard Jr.*, January 17, 2011, *In Re: Oil Spill By The Oil Rig ''Deepwater Horizon'' In The Gulf Of Mexico, on April 20, 2010*, MDL No. 2179. Note: Prof. Hazard is Distinguished Professor of Law, Hastings College of the Law, University of California, Trustee Professor of Law, University of Pennsylvania. He has taught and practiced in the fields of Civil Procedure and Professional Ethics since 1958, and has co-authored treatises and law school casebooks in both fields.

[66] *Hospitality Mgmt. Assocs. v. Shell Oil Co.*, 356 S.C. 644, 662 (S.C. 2004), *cert. denied*, 543 U.S. 916 (U.S. 2004), ''The court further described the program as one unprecedented in 'reach, scope, and effectiveness' . . . . Clearly, the Cox court designed and utilized various procedural safeguards to guarantee sufficient notice under the circumstances. Pursuant to a limited scope of review, we need go no further in deciding the Cox court's findings that notice met due process are entitled to deference.''

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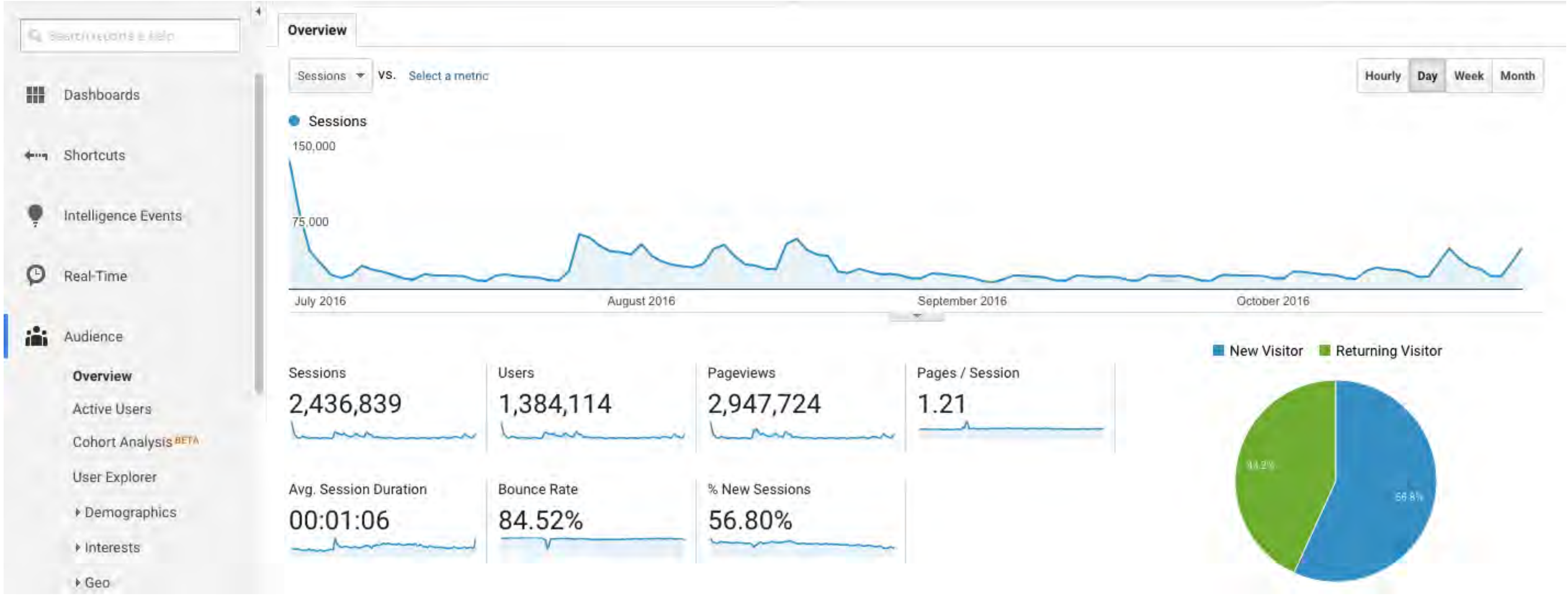
EXHIBIT HH

Sample Report Google Analytics



Dashboards
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Real-Time
Audience
Overview
Active Users
Cohort Analysis BETA
User Explorer
Demographics
Interests
Geo
Overview
Sessions
VS.
Select a metric
Hourly
Day
Week
Month
Sessions
150,000
75,000
July 2016
August 2016
September 2016
October 2016
New Visitor
Returning Visitor
Sessions
2,436,839
Users
1,384,114
Pageviews
2,947,724
Pages / Session
1.21
Avg. Session Duration
00:01:06
Bounce Rate
84.52%
% New Sessions
56.80%

EXHIBIT II

Federal Judicial Center - Mozilla Firefox
File Edit View History Bookmarks Tools Help
Federal Judicial Center
www.fjc.gov
Most Visited Getting Started THG Rackspace Outlo... Home Access Center L... Facebook

(For more detailed information on the methodology involved in our research and drafting prior to the 2001 posting, click here)

Notes for use by attorneys and judges

We designed the illustrative notice forms posted here to demonstrate ways that clear, simple, "plain" language and design can be used when drafting class action notices. In an actual case, attorneys and judges can adapt an illustrative notice to the unique factual, legal, and procedural circumstances of their case.

For each type of illustrative notice posted here we drafted a detailed "full" notice that an attorney might mail to known class members, post to a website, or otherwise provide to class members. To encourage recipients to open a mailing, we drafted language that might be used on the outside of a mailing envelope. We also drafted a short publication notice. The products liability notice, based on a hypothetical asbestos personal-injury settlement, has two target audiences: homeowners and construction workers. Therefore, we prepared two separate publication notices, both of which are included under the heading "Products liability class action certification and settlement: publication notice."

Effective notice to a class may require translation of the English-language notice into languages used by a substantial portion of the class members. To call attention to this need and to illustrate its form in two types of notices, we translated into Spanish the securities class action publication notice and the products liability class action full notice.

In November 2010, we added two new tools—a notice checklist and a plain language guide—to help attorneys and judges create effective notices and notice plans. We created these with assistance from Todd B. Hilsee of the Hilsee Group LLC. The checklist provides overall guidance on notice and notice plan development and provides guidance for improving class actions claims processes. A graphical plain language notice guide explains and highlights the important features of the illustrative notices. The checklist and language guide are available as one document at the link below.

– Managing Class Action Litigation: A Pocket Guide for Judges, Third Edition (2010)
– Notice Checklist and Plain Language Guide (2010) ("Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide")
– California Guidelines for Motions for Preliminary and Final Approval of Class Settlement (with comments referencing authorities) Draft, May 3, 2010

Acknowledgments

We thank all the organizations and individuals who provided us with advice and comments. We wish to specifically acknowledge the class action notice drafting, design, and communications expertise provided by Todd B. Hilsee, of The Hilsee Group, Souderton, PA, and the legal writing and plain-language expertise provided by Terri R. LeClercq, Ph.D. of the University of Texas School of Law, Austin, TX. During the rulemaking process, both made their interest in helping known to the Advisory Committee, which referred them to the Center. Their significant and extensive pro bono services have enhanced the work done for the Advisory Committee. We also acknowledge the Spanish-language expertise of Abby Dings, University of Texas, Austin, TX.

The Federal Judicial Center produced and maintains this website in furtherance of its statutory mission. The Center regards the contents of this site to be responsible and valuable, but these contents do not reflect official policy or recommendations of the Board of the Federal Judicial Center. The site also contains links to relevant information on websites maintained by other organizations; providing these external links is for the convenience of this site's users and does not constitute verification or endorsement of the information or the sites to which the links are provided.

Thursday, April 26, 2012
start Federal Judicial Cent... 12:09 PM

Major Checkpoints

- ❑ ***Will notice effectively reach the class?***
  The percentage of the class that will be exposed to a notice based on a proposed notice plan can always be calculated by experts. A high percentage (e.g., between 70–95%) can often reasonably be reached by a notice campaign.
- ❑ ***Will the notices come to the attention of the class?***
  Notices should be designed using page-layout techniques (e.g., headlines) to command class members' attention when the notices arrive in the mail or appear on the Internet or in printed media.
- ❑ ***Are the notices informative and easy to understand?***
  Notices should carry all of the information required by Rule 23 and should be written in clear, concise, easily understood language.
- ❑ ***Are all of the rights and options easy to act upon?***
  There should be no unnecessary hurdles that make it difficult for class members to exercise their rights to opt out, object, submit a claim, or make an appearance.

Before Certification/Preliminary Settlement Approval

- ❑ ***Can any manageability problems from notice issues be overcome?***
  Consider potential problems in reaching and communicating with class members—e.g., language barriers, class size, geographic scope—and whether a notice plan will be able to overcome such problems.
- ❑ ***Can a high percentage of the proposed class be reached (i.e., exposed to a notice)?***
  Consider the breakdown of known and unknown class members, the age of any mailing lists, and the parties' willingness to spend necessary funds to fully reach the class.
- ❑ ***Is it economically viable to adequately notify the class?***
  If the cost to reach and inform a high percentage of the class is not justified by a proposed settlement, an opt-out class may not be appropriate. Inability to support proper notice may also be evidence that the settlement is weak.
- ❑ ***Will unknown class members understand that they are included?***
  If a well-written notice will leave class members in doubt as to whether they are included, consider whether the class definition, or the class certification, is appropriate.

Upon Certification/Preliminary Settlement Approval

- ❑ ***Do you have a "best practicable" notice plan from a qualified professional?***
  A proper notice plan should spell out how notice will be accomplished, and why the proposed methods were selected. If individual notice will not be used to reach everyone, be careful to obtain a first-hand detailed report explaining why not. See "Notice Plan" section below.

- ❑ ***Do you have unbiased evidence supporting the plan's adequacy?***
  Be careful if the notice plan was developed by a vendor who submitted a low bid and might have incentives to cut corners or cover up any gaps in the notice program. In order to find the "best practicable" notice as Rule 23 requires, your own expert report may be advisable. This is especially true in the diminished adversarial posture in which settlement places the parties. It is also true at preliminary approval, before outsiders are aware of the proposed notice plan, which itself may limit the parties' awareness, in turn impacting your final approval decision.

- ❑ ***Have plain language forms of notice been created?***
  Draft forms of the notices should be developed, in the shape, size, and form in which they will actually be disseminated, for your approval before authorizing notice to the class. See "Notice Documents" below.

- ❑ ***Will a qualified firm disseminate notice and administer response handling?***
  There are many experienced firms that compete for administration of notice dissemination and claims and response handling. Appointing a qualified firm is important because errors may require re-notification, drain funds, delay the process, and threaten recognition of your final judgment.

Notice Plan

- ❑ ***Is the notice plan conducive to reaching the demographics of the class?***
  The notice plan should include an analysis of the makeup of the class. There may be more women than men; it may skew older; it may be less educated than average. Each audience can be matched with the most efficient and effective methods of notice for reaching those people.

- ❑ ***Is the geographic coverage of the notice plan sufficient?***
  Notice for a class action should take steps to reach people wherever they may be located, and also take into account where most class members reside.

  - ❍ ***Is the coverage broad and fair? Does the plan account for mobility?***
    Class members choose to live in small towns as well as large cities. Be careful with notice exclusively targeted to large metropolitan newspapers. Class members move frequently (14–17% per year according to the U.S. Census Bureau), so purchasers in one state may now reside in another.

  - ❍ ***Is there an extra effort where the class is highly concentrated?***
    Evidence may show that a very large portion of class members reside in a certain state or region, and notice can be focused there, while providing effective, but not as strong, notice elsewhere.

- ❑ ***Does the plan include individual notice?***
  If names and addresses are reasonably identifiable, Rule 23(c)(2) requires individual notice. Be careful to look closely at assertions that mailings are not feasible.

  - ❍ ***Did you receive reliable information on whether and how much individual notice can be given?***
    Consider an expert review of the information you have been provided regarding the parties' ability to give individual notice. The parties may have agreed to submit a plan that does not provide sufficient individual notice in spite of the rule.

- ❍ ***Will the parties search for and use all names and addresses they have in their files?***
  If the parties suggest that mailings are impracticable, look to distinguish between truly unreasonable searches (e.g., the defendant has nuggets of data that could be matched with third-party lists by a new computer program and several man-years) and situations where a search would be difficult but not unreasonably burdensome (e.g., lists reside directly in the defendant's records but are outdated or expensive to mail to because of the volume). Rule 23 generally requires the latter.
- ❍ ***Will outdated addresses be updated before mailing?***
  The plan should detail steps to update addresses before mailing, including postal service change-of-address records, and third-party address databases if the list is very old. Watch out for potentially ineffective "last known address" mailings.
- ❍ ***Has the accuracy of the mailing list been estimated after updating efforts?***
  Look for information that indicates how accurate the mailing addresses will be after the planned address updating effort.
- ❍ ***Has the percentage of the class to be reached by mail been calculated?***
  The parties should be able to indicate how great a percentage of the overall class will be reached by individual notice, so that the extent of any necessary additional notice can be determined.
- ❍ ***Are there plans to re-mail notices that are returned as undeliverable?***
  Even after updating addresses before mailing, mail will be returned as undeliverable. Further lookup tactics and sources are often available, and it is reasonable to re-mail these notices.
- ❍ ***Will e-mailed notice be used instead of postal mailings?***
  If available, parties should use postal mailing addresses, which are generally more effective than e-mail in reaching class members: mail-forwarding services reach movers, and the influx of "SPAM" e-mail messages can cause valid e-mails to go unread. If e-mail will be used—e.g., to active e-mail addresses the defendant currently uses to communicate with class members—be careful to require sophisticated design of the subject line, the sender, and the body of the message, to overcome SPAM filters and ensure readership.

❑ ***Will publication efforts combined with mailings reach a high percentage of the class?***
The lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%. A study of recent published decisions showed that the median reach calculation on approved notice plans was 87%.

❑ ***Are the reach calculations based on accepted methodology?***
An affiant's qualifications are important here. Reach calculation methodology is commonly practiced in advertising and media-planning disciplines. Claims administrators are often accountants by training and may lack personal knowledge or the training to conduct reach analyses.

- ❍ ***Is the net reach calculation thorough, conservative, and not inflated?***
  Circulation figures for separate dissemination methods cannot simply be added to determine reach. Total audience must be calculated for each publication and the net must be calculated for a combination of publications. Be sure the reach calculation removes overlap between those people exposed to two or more dissemination methods (e.g., a person who receives a mailing may also be exposed to the notice in a publication).

- ❍ ***Do the reach calculations omit speculative reach that only might occur?***
  Watch for estimated reach calculations that are based in part on speculative notice that might occur, e.g., news coverage about the lawsuit or settlement. Often, these news articles do not ultimately explain class members' rights, and the content is not in the court's control.
- ❍ ***Is any Internet advertising being measured properly?***
  Audiences of Internet websites are measured by "impressions." Total, or "gross," impressions of the entire website do not reveal how many people will view the notice "ad" appearing periodically on a particular page. Inflated audience data via Internet ads is common. It is very expensive to reach a significant percentage of a mass audience with Internet banner ads. Watch for suggestions that Internet ads and social network usage can replace all other methods. Reach, awareness, and claims will likely be very low when such a program is complete.

❑ ***Is non-English notice necessary?***
Consider the demographics of the class to determine whether notice is necessary in Spanish or another language. The number of class members whose native language is not English should guide you on whether to actively disseminate notice in other languages, or to simply make foreign language notices available at a website.

❑ ***Does the notice plan allow enough time to act on rights after notice exposure?***
Class members need time to receive a notice by mail or in a publication. A minimum of 30 days is necessary from completed dissemination before deadlines, with 60–90 days preferred. This allows for re-mailings, fulfillment of requests for more information, and consideration of rights and options.

❑ ***Will key documents be available at a neutral website?***
Class members should have access to information beyond the notice. Besides the summary notice and detailed notice (following the FJC examples at www.fjc.gov), it is reasonable to post the following documents at a neutral administrator's website dedicated to the case: the plaintiffs' complaint, the defendants' answer, your class-certification decision (in the event of a class certified for trial), and the settlement agreement and claim form (in the event of a settlement). Other orders, such as your rulings on motions to dismiss or for summary judgment, should ordinarily be made available as well.

❑ ***Can the class get answers from a trained administrator or from class counsel?***
Even the best notice will generate questions from class members. A toll-free number call center, an interactive website staffed by trained administrators, and class counsel who are accessible to the people they represent are reasonable steps to help class members make informed decisions.

Notice Documents ***(also see Plain Language Notice Guide, below)***

❑ ***Have you approved all of the forms of the notices?***
Before authorizing the parties to begin disseminating notices, you should ask for and approve all forms of notice that will be used. This includes a detailed notice; a summary notice; and information that will appear at the website and in any other form, such as an Internet banner, TV notice, and radio notice. See www.fjc.gov for illustrative notice forms for various cases. It is best to see and approve the forms of notice the way they will be disseminated, in their actual sizes and designs.

- ❑ ***Are the notices designed to come to the attention of the class?***
  The FJC's illustrative notices, as also described in the accompanying "***Plain Language Notice Guide***," explain how to be sure the notices are "noticed" by the casual-reading class member. With "junk mail" on the rise, and the clutter of advertising in publications, legal notices must stand out with design features long-known to communications pros.
  - ❍ ***Does the outside of the mailing avoid a "junk mail" appearance?***
    Notices can be discarded unopened by class members who think the notices are junk mail. A good notice starts with the envelope design, examples of which are at www.fjc.gov.
  - ❍ ***Do the notices stand out as important, relevant, and reader-friendly?***
    It is important to capture attention with a prominent headline (like a newspaper article does). This signals who should read the notice and why it is important. The overall layout of the notice will dictate whether busy class members will take time to read the notice and learn of their rights.
- ❑ ***Are the notices written in clear, concise, easily understood language?***
  Required by Rule 23 since 2003, it is also simply good practice to recognize that communicating legal information to laypeople is hard to do.
- ❑ ***Do the notices contain sufficient information for a class member to make an informed decision?***
  Consider the amount of information provided in the notice. Watch for omission of information that the lawyers may wish to obscure (such as the fee request) but that affects class members nonetheless.
- ❑ ***Do the notices include the Rule 23 elements? Even the summary notice?***
  Summary notices, whether mailed or published, encourage readership, and the FJC illustrative notices show that even summary notices can include all elements required by Rule 23(c)(2)(B). But an overly short summary notice, one that mostly points interested readers to a detailed notice, can result in most class members (who read only the summary notice) being unaware of basic rights.
- ❑ ***Have the parties used or considered using graphics in the notices?***
  Depending on the class definition or the claims in the case, a picture or diagram may help class self-identify as members, or otherwise determine whether they are included.
- ❑ ***Does the notice avoid redundancy and avoid details that only lawyers care about?***
  It is tempting to include "everything but the kitchen sink" in the detailed notice. Although dense notices may appear to provide a stronger binding effect by disclosing all possible information, they may actually reduce effectiveness. When excess information is included, reader burnout results, the information is not communicated at all, and claims are largely deterred.
- ❑ ***Is the notice in "Q&A" format? Are key topics included in logical order?***
  The FJC illustrative notices take the form of answers to common questions that class members have in class action cases. This format, and a logical ordering of the important topics (taking care to include all relevant topics) makes for a better communication with the class.
- ❑ ***Are there no burdensome hurdles in the way of responding and exercising rights?***
  Watch for notice language that restricts the free exercise of rights, such as onerous requirements to submit a "satisfactory" objection or opt-out request.

- ❑ ***Is the size of the notice sufficient?***
  Consider the balance between cost efficiency and effectiveness. A smaller publication notice will save money, but too small and it will not afford room for a noticeable headline, will not fit necessary information, and will not be readable if using fine print.

Claims Process

- ❑ ***Is a claims process actually necessary?***
  In too many cases, the parties may negotiate a claims process which serves as a choke on the total amount paid to class members. When the defendant already holds information that would allow at least some claims to be paid automatically, those claims should be paid directly without requiring claim forms.
- ❑ ***Does the claims process avoid steps that deliberately filter valid claims?***
  Close attention to the nature of a necessary claims process may help eliminate onerous features that reduce claims by making claiming more inconvenient.
- ❑ ***Are the claim form questions reasonable, and are the proofs sought readily available to the class member?***
  Watch for situations where class members are required to produce documents or proof that they are unlikely to have access to or to have retained. A low claims rate resulting from such unreasonable requirements may mean that your eventual fairness decision will overstate the value of the settlement to the class and give plaintiff attorneys credit for a greater class benefit than actually achieved.
- ❑ ***Is the claim form as short as possible?***
  A long, daunting claim form is more likely to be discarded or put aside and forgotten by recipients. Avoid replicating notice language or injecting legalistic terminology into the claim form which will deter response and confuse class members.
- ❑ ***Is the claim form well-designed with clear and prominent information?***
  Consider whether the claim form has simple, clearly worded instructions and questions, all presented in an inviting design. The deadlines and phone numbers for questions should be prominent.
- ❑ ***Have you considered adding an online submission option to increase claims?***
  As with many things, convenience is of utmost importance when it comes to claims rates. Today, many class members expect the convenience of one-click submission of claims. Technology allows it, even including an electronic signature. Claim forms should also be sent with the notice, or published in a notice, because many will find immediate response more convenient than going to a website.
- ❑ ***Have you appointed a qualified firm to process the claims?***
  You will want to be sure that the claims administrator will perform all "best practice" functions and has not sacrificed quality in order to provide a low price to win the administration business.

- ❑ ***Are there sufficient safeguards in place to deter waste, fraud, and/or abuse?***
The claims process, the claim form itself, and the claims administrator all play roles in ensuring that approved claims are valid claims, so that payments go to class members who meet the criteria. Closely monitoring the process, perhaps through a special master—or at least by requiring the parties to file full reports of claims made—is a good idea.

After Notice/Before Trial or Final Settlement Approval

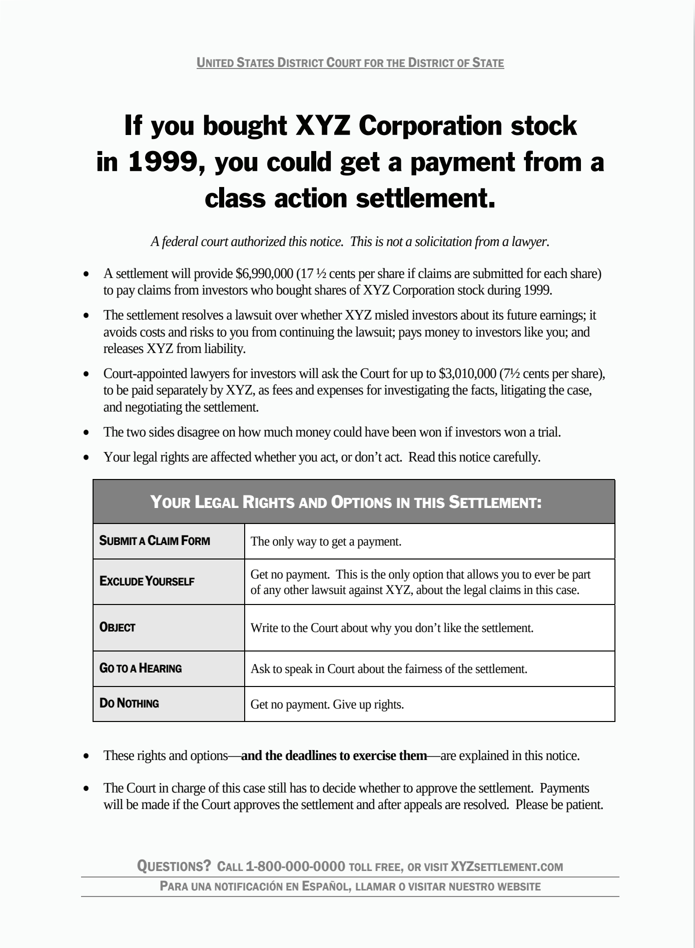
- ❑ ***Did the notice plan achieve what it promised?***
Look for evidence that the notice plan reached the class members as well as anticipated.

- ❑ ***What is the reaction of the class?***
You will want to look at the number and nature of any objections, as well as the number of opt-outs and claims. Special note: waiting for the claims deadline to expire before deciding on final approval ensures that you can look at a full picture of the fairness of the settlement. By so doing you will be able to judge the actual value of the settlement to the class and calculate attorney fees in relation to that value.

- ❑ ***Have you made sufficient findings in the record?***
Consider, based on the evidence, making detailed findings so as to inhibit appellate review or to withstand a subsequent collateral review of your judgment.

- ❑ ***Is any subsequent claims-only notice necessary?***
If you find the settlement fair, reasonable, and adequate, but the number of claims is low, you may consider additional notice to the class after final approval.

Detailed Notice—First Page



UNITED STATES DISTRICT COURT FOR THE DISTRICT OF STATE

If you bought XYZ Corporation stock in 1999, you could get a payment from a class action settlement.

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide $6,990,000 (17 ½ cents per share if claims are submitted for each share) to pay claims from investors who bought shares of XYZ Corporation stock during 1999.
- The settlement resolves a lawsuit over whether XYZ misled investors about its future earnings; it avoids costs and risks to you from continuing the lawsuit; pays money to investors like you; and releases XYZ from liability.
- Court-appointed lawyers for investors will ask the Court for up to $3,010,000 (7½ cents per share), to be paid separately by XYZ, as fees and expenses for investigating the facts, litigating the case, and negotiating the settlement.
- The two sides disagree on how much money could have been won if investors won a trial.
- Your legal rights are affected whether you act, or don't act. Read this notice carefully.

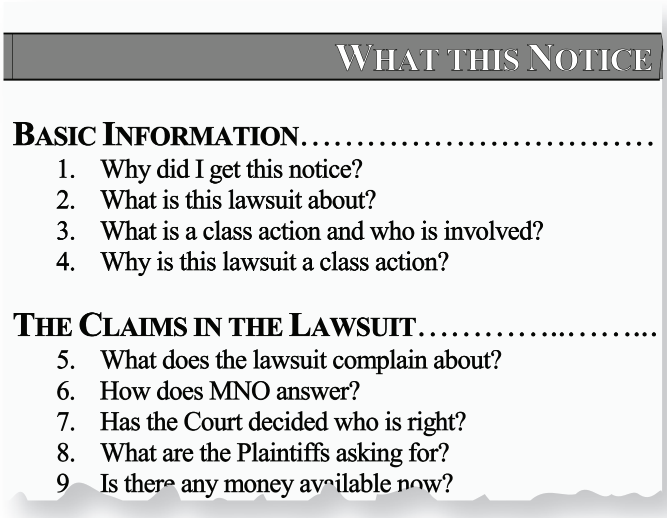
YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	The only way to get a payment.
EXCLUDE YOURSELF	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against XYZ, about the legal claims in this case.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	Get no payment. Give up rights.

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT XYZSETTLEMENT.COM

PARA UNA NOTIFICACIÓN EN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

- Page one is an overall summary of the notice. The objective is to use the fewest words to say the most. It is a snapshot of the case, of the reasons for the notice, and of the rights that class members have.
- The court's name at the top conveys the importance of the notice.
- A headline in a large font captures attention. It conveys what the notice is about and who is included, and it suggests a benefit to reading the entire notice.
- The words in italics below the headline communicate the official nature of the notice and provide a contrast from a lawyer's solicitation. Be sure to avoid a traditional legalistic case caption.
- Short bullet points highlight the nature of the case and the purpose of the notice. Bullet points also communicate who is included, the benefits available (if it is a settlement), and steps to be taken—identifying deadlines to observe. The first page should pique class members' interest and encourage them to read the entire notice.
- The table of rights explains the options available. These are deliberately blunt. Be careful to avoid redundancy with the information inside the notice.
- The first page should prominently display a phone number, e-mail address, or website where the class can obtain answers to questions.
- If appropriate for the class, include a non-English (e.g., Spanish) language note about the availability of a copy of the notice in that language.



WHAT THIS NOTICE

BASIC INFORMATION……………………………
1. Why did I get this notice?
2. What is this lawsuit about?
3. What is a class action and who is involved?
4. Why is this lawsuit a class action?

THE CLAIMS IN THE LAWSUIT…………..……..
5. What does the lawsuit complain about?
6. How does MNO answer?
7. Has the Court decided who is right?
8. What are the Plaintiffs asking for?
9. Is there any money available now?

Detailed Notice—Table of Contents

- Organize the topics into different sections and place the information in a logical order.
- A "Q&A" or "Answers to Common Questions" format helps class members find the information that is important to their decision-making process.
- Customize the topics to the facts of the case, but keep the overall notice short: 8–11 pages should be plenty even for complex matters.
- Don't avoid obvious questions (or answers) that class members will have.

EXCLUDING YOURSELF FROM THE SETTLEME

If you don't want a payment from this settlement, but you want to keep the right to sue
sue XYZ, on your own, about the legal issues in this case, then you must take steps to g
called excluding yourself—or is sometimes referred to as opting out of the settlement C

13. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail saying that you
excluded from *North v. XYZ*. Be sure to include your name, address, telephone numb
signature. You must mail your exclusion request postmarked no later than **Month 00,**

XYZ Exclusions
P.O. Box 0000
City, ST 00000-0000

If you ask to be excluded, you will not get any settlement payment, and you cannot ob
settlement. You will not be legally bound by anything that happens in this lawsuit.
sue (or continue to sue) XYZ in the future.

14. If I don't exclude myself, can I sue XYZ for the same thing later?

No. Unless you exclude yourself, you give up any right to sue XYZ for the claims th

Detailed Notice—Inside Content

- Short answers are best. Be sure that the text answers the question being asked and does not "spin" the information in a way to achieve a desired result—e.g., do not use language that encourages class members to accept a proposed settlement.

- Watch for redundant and lengthy information, but also substantive omissions. Be frank and open for better reader comprehension and, as a result, a stronger binding effect.

- Every detail does not belong in the notice, but all rights and options do. Explain settlement benefits and state the fees that the lawyers will seek. Watch for burdensome requirements that might inhibit objections, opt outs, or claims.

- Use plain language. You may closely follow the illustrative models at www.fjc.gov.

Summary Notice

- The summary notice should be short but comprehensive. Refer to all of the requirements of Rule 23 in a simple and clear summary fashion. Follow the FJC models wherever possible.

- The "Legal Notice" banner at the top helps stop a publisher from typesetting the word "advertisement" at the top, which would create a perception that the notice is a solicitation. Do not use the legal case caption style.

- The headline in large font captures the attention of readers who glance at the page. It flags what the notice is about, who is included, and it signals a benefit to be derived by reading the notice.

- The initial paragraphs provide a snapshot of all key information.

- Be sure to explain class membership in a simple way. Consider a graphic to help readers understand that they are included.

- Make a brief but clear reference to the substance of the case and the claims involved.

- Identify clearly what class members could get and how they would get it. These are the most common questions from class members.

LEGAL NOTICE

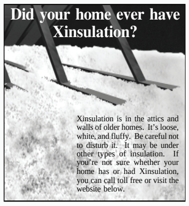
If you were exposed to asbestos in Xinsulation, you could get benefits from a class action settlement.

A settlement of a class action lawsuit affects you if you were ever exposed to asbestos in Xinsulation, Xbestos, or other ABC Corporation products. The settlement will pay people who are suffering from an asbestos-related disease, as well as those who were exposed but not sick, who need medical monitoring. If you qualify, you may send in a claim form to ask for payment, or you can exclude yourself from the settlement, or object.

The United States District Court for the District of State authorized this notice. The Court will have a hearing to consider whether to approve the settlement, so that the benefits may be paid.

WHO'S AFFECTED?

Homeowners whose homes have or had Xinsulation (pictured and described to the right) are included in the settlement. Construction workers who installed, or worked around, Xbestos and other ABC products are also included, as described in separate notices. *You're a 'Class Member' if you were exposed to asbestos fibers in any ABC Corporation products any time before Month 00, 0000.*


Did your home ever have Xinsulation?
Xinsulation is in the attics and walls of older homes. It's loose, white, and fluffy. Be careful not to disturb it. It may be under other types of insulation. If you're not sure whether your home has or had Xinsulation, you can call toll free or visit the website below.

WHAT'S THIS ABOUT?

The lawsuit claimed that ABC made and sold products knowing that the asbestos fibers contained in them posed a danger to the health and safety of anyone exposed to them. The suit claimed that exposure increased the risk of developing Asbestosis, Mesothelioma, Lung Cancer, or other diseases that scientists have associated with exposure to asbestos. ABC denies all allegations and has asserted many defenses. The settlement is not an admission of wrongdoing or an indication that any law was violated.

WHAT CAN YOU GET FROM THE SETTLEMENT?

There will be an Injury Compensation Fund of $200 million for Class Members who have been diagnosed with an asbestos-related disease, and a $70 million Medical Monitoring Fund for checking the health of those who were exposed but are not currently suffering from an asbestos-related disease. Compensation for injuries will be in varying amounts for specific diseases:

DISEASE	MINIMUM	MAXIMUM	AVERAGE
MESOTHELIOMA	$10,000	$100,000	$20,000-$30,000
LUNG CANCER	$5,000	$43,000	$9,000-$15,000
OTHER CANCER	$2,500	$16,000	$4,000-$6,000
NON-MALIGNANT	$1,250	$15,000	$3,000-$4,000

Medical monitoring payments will be $1,000 or the amount of your actual medical expenses, whichever is greater.

HOW DO YOU GET A PAYMENT?

A detailed notice and claim form package contains everything you need. Just call or visit the website below to get one. **Claim forms are due by Month 00, 0000**. For an injury compensation claim, you'll have to submit a statement from a doctor that describes your current medical condition and confirms that you have one of the diseases in the box above. For a medical monitoring claim, you'll have to show proof of your exposure to an ABC asbestos-containing product.

WHAT ARE YOUR OPTIONS?

If you don't want a payment and you don't want to be legally bound by the settlement, you must exclude yourself by **Month 00, 0000,** or you won't be able to sue, or continue to sue, ABC about the legal claims in this case. If you exclude yourself, you can't get a payment from this settlement. If you stay in the Class, you may object to the settlement by **Month 00, 0000**. The detailed notice describes how to exclude yourself or object. The Court will hold a hearing in this case (*Smith v. ABC Corp.*, Case No. CV-00-1234) on **Month 00, 0000,** to consider whether to approve the settlement and attorneys' fees and expenses totalling no more than $30 million. You may appear at the hearing, but you don't have to. For more details, call toll free 1-800-000-0000, go to www.ABCsettlement.com, or write to ABC Settlement, P.O. Box 000, City, ST 00000.

1-800-000-0000 **www.ABCsettlement.com**

- Be sure to include clear references to opt out, objection, and appearance rights. State the amount of the lawyers' fee request.

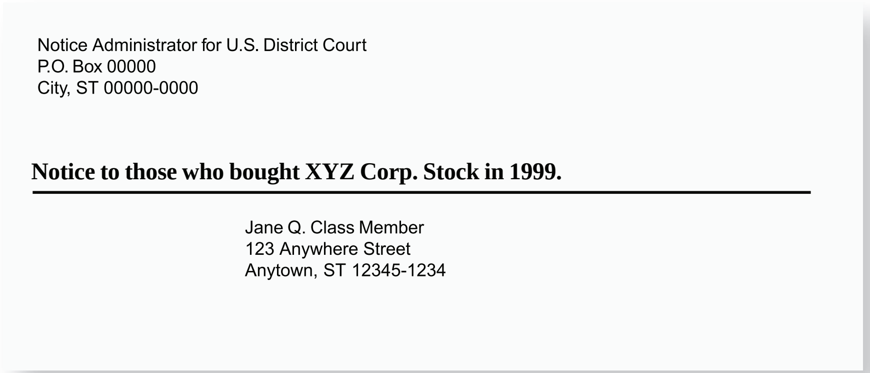
- Include a prominent reference to the call center and website.

Outside of Mailing

- Design the notice to make it distinguishable from "junk mail."

- A reference to the court's name (at the administrator's address) ensures that the class recognizes the notice's legitimacy.

- "Call-outs" on the front and back encourage the recipient to open and read the notice when it arrives with other mail.

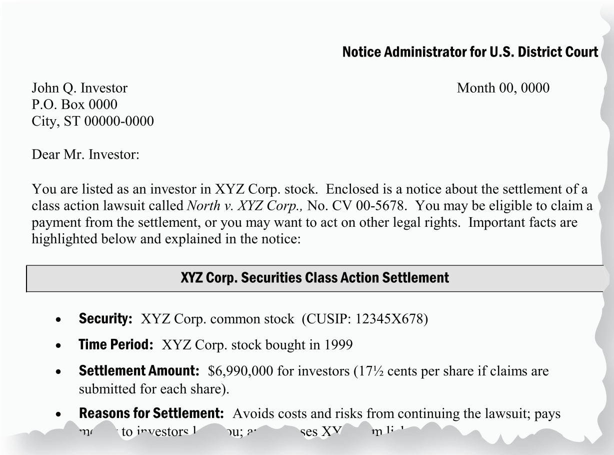

Notice Administrator for U.S. District Court
P.O. Box 00000
City, ST 00000-0000

Notice to those who bought XYZ Corp. Stock in 1999.

Jane Q. Class Member
123 Anywhere Street
Anytown, ST 12345-1234

- The call-out on the front (shown on example above) identifies what the notice is about and who is affected. On the back you may highlight the settlement benefits, or the rights involved.

- Use these techniques even if the mailed notice is designed as a self-mailer, i.e., a foldover with no envelope.


Notice Administrator for U.S. District Court

John Q. Investor
P.O. Box 0000
City, ST 00000-0000

Month 00, 0000

Dear Mr. Investor:

You are listed as an investor in XYZ Corp. stock. Enclosed is a notice about the settlement of a class action lawsuit called _North v. XYZ Corp._, No. CV 00-5678. You may be eligible to claim a payment from the settlement, or you may want to act on other legal rights. Important facts are highlighted below and explained in the notice:

XYZ Corp. Securities Class Action Settlement

- **Security:** XYZ Corp. common stock (CUSIP: 12345X678)
- **Time Period:** XYZ Corp. stock bought in 1999
- **Settlement Amount:** $6,990,000 for investors (17½ cents per share if claims are submitted for each share).
- **Reasons for Settlement:** Avoids costs and risks from continuing the lawsuit; pays

Cover Letter (when compliance with PSLRA is needed)

- Identify the court's administrator as the sender—this conveys legitimacy.

- The content should be very short. Remember that this is not the notice.

- A reference in bold type to the security involved flags the relevance of the letter.

- The bullet points track each PSLRA cover letter requirement. Avoid lengthy explanations that are redundant with the notice. Be blunt for clarity.

- The content in the FJC's PSLRA cover letter can simply be customized for the case at hand. The design encourages interest, reading, and action.

Managing Class Action Litigation: A Pocket Guide for Judges

Third Edition

Barbara J. Rothstein & Thomas E. Willging

Federal Judicial Center
2010

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to develop educational materials for the judicial branch. While the Center regards the content as responsible and valuable, it does not reflect policy or recommendations of the Board of the Federal Judicial Center.

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Preface

This pocket guide is designed to help federal judges manage the increased number of class action cases filed in or removed to federal courts as a result of the Class Action Fairness Act of 2005 (CAFA). The 2005 legislation expresses congressional confidence in the abilities of federal judges to ensure "fair and prompt recoveries for class members with legitimate claims" and to provide appropriate "consideration of interstate cases of national importance under diversity jurisdiction." CAFA § 2(b). This third edition includes an expanded treatment of the notice and claims processes. Revisions are concentrated in parts III and IV.

CAFA also calls on the judiciary to develop and implement "best practices" for achieving the goals of ensuring that settlements are fair to class members and ensuring that class members are the primary beneficiaries of any settlement. This guide is part of the federal judiciary's continuing effort to achieve those goals. This edition also carries over from the second edition suggestions based on recent empirical research indicating that the administration of settlements has been less than transparent, especially regarding the disclosure of claims rates and actual payments to class members, to the detriment of litigants and policy makers.

A note of appreciation goes to Judge D. Brock Hornby (D. Me.) for his detailed suggestions and outline of topics, which served as a catalyst and road map for the original publication. Todd Hilsee, a class action notices expert with The Hilsee Group, supplied pro bono assistance in improving the sections on notices and on claims processes. We are also grateful to Jared Bataillon, who contributed valuable research assistance for this third edition.

I hope you find this guide useful in meeting the challenges Congress has entrusted to us in managing class action litigation.

Barbara Jacobs Rothstein
Director, Federal Judicial Center

the outset of any class action, consider entering a standing order that requires counsel to inform the court promptly of any related class actions. Communication and administrative coordination with other judges will often be necessary. Other things being equal, federal judges should exercise federal jurisdiction over classes of nationwide scope; actions limited to single states can be carved out of any national certification.

E. Notice

If you certify a class for litigation purposes, be prepared to decide on notice and allow members of Rule 23(b)(3) classes the opportunity to opt out before the trial. In fact, whether adequate notice *can* be given may be a significant factor in determining manageability as part of your class certification decision. *See In re* Vivendi Universal, S.A. Securities Litigation, 242 F.R.D. 76, 107–09 (2007). Class members, particularly unknown ones, must be able to understand that they are included. This could be a problem, for example, if the class member must recall making modest retail purchases in certain places, or know that a certain component is contained in a product. For a discussion of general notice and communication factors, see section IV.F, "Notice issues," below, as well as the "Notice Checklist and Plain Language Guide" available at the Class Action Notices Page at www.fjc.gov. The Federal Judicial Center provides examples of illustrative class certification notices on our website.

IV. Settlement Review: Risks and Issues

Reviewing proposed settlements and awarding fees are usually the most important and challenging assignments judges face in the class action arena. Unlike settlements in other types of litigation, class action settlements are not an unequivocal blessing for judges. Rule changes, precedent, recent legislation, and elemental fairness to class members direct you not to rubber-stamp negotiated settlements on the basis of a cursory review. Current rules, particularly Federal Rule of Civil Procedure 23, unambiguously place you in the position of safeguarding the interests of absent class members by scrutinizing settlements approved by class counsel. Recognizing class members. Such services can increase the claims rate and provide a service to class members, but they do not generally add any value to a claim. The worst pitfall is that some claims services have absconded with funds. Protections in the form of requiring claims filing services to register with the court and maintain funds in a trust account may be in order.

F. Notice issues

Opt-out notice binds class members by their silence, so you will want to focus on ensuring adequate notice. This pocket guide emphasizes notice issues because notices that fail to reach class members, or that confuse them, are all too common. They result in very low participation rates and discredit the class action procedure.

This section highlights some of the key notice issues. The "Notice Checklist and Plain Language Guide," available at the Class Action Notices Page at www.fjc.gov, details important considerations for notice to class members in several areas.

1. Notice to government regulators

CAFA requires that within ten days after a proposed settlement is filed in court, each participating defendant must serve notice of specified settlement-related papers on (1) the U.S. Attorney General or, in the case of a depository institution, the primary federal regulatory official *and* (2) the primary state regulatory official (or, if none, the attorney general) of each state in which a class member resides. 28 U.S.C. § 1715 (2008). The idea is to encourage government regulators to participate in reviewing settlements and lend their expertise (and perhaps an adversarial note) to the fairness hearing. You may want to consider extending an express invitation—to the preliminary approval hearing and to the fairness hearing—to any regulatory body you have found to be effective in dealing with the subject matter in question.

The Federal Trade Commission has extensive statutory authority and expertise in dealing with antitrust, unfair competition, and consumer protection matters. *See generally* FTC, Fulfilling the Original Vision: The FTC at 90 (Apr. 2004) (available at http://ftc.gov/os/2004/04/040402abafinal.pdf). CAFA does not specify the FTC as an agency that must receive notice, but consider adding the FTC to the notice list in consumer and trade practice litigation, including antitrust actions. The FTC has created a "Class Action Fairness Project," which channels FTC resources into reviewing proposed settlements as well as class counsel requests for attorney fees. Since defendants have made copies of—or electronic links to—the required settlement documents for other agencies, it will be no burden on them to send notice to the FTC or other consumer protection entities in appropriate cases.

2. Notice to the class

Notices are usually the only way to communicate with unnamed class members and enable them to make informed decisions about whether to participate in a class action settlement, or to exercise their due process rights to be heard before final approval of the settlement. Your primary goals are that the notice reach as many class members as possible, preferably by individual notification (*see* Rules 23(c)(2) and 23(e)(1) and MCL 4th § 21.312), and that the recipients see it, recognize its connection to their lives and self-interests, read it, and act on it. *See* Todd B. Hilsee et al., *Do You Really Want Me To Know My Rights?* 18 Geo. J. Legal Ethics 1359 (2005).

The first challenge is to *reach* a high percentage of class members. Notice plans that appear reasonable may in fact reach only a small percentage of class members. Before approving a notice plan, consider asking for calculations to demonstrate the "reach"—i.e., the net percentage of class members who will receive or otherwise be exposed to a notice. You can use reach statistics to substantially improve the net reach to class members. The norm is in the 70–95% range. Consider asking whether the proposed notice plan was created by a vendor who will be paid to implement it if approved. If so, consider obtaining an independent analysis of the notice plan's adequacy before approving the plan. Competing vendors may cut corners to win the business, but you must find the "best notice that is practicable under the circumstances." Rule 23(c)(2)(B). To satisfy due process, the notice must reflect a "desire to actually inform." *See* Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950).

Be certain the notice plan includes individual notice to all "reasonably identifiable" class members under Rule 23(c)(2). The plan should take steps to update addresses before mailing and provide for re-mailing notices to better addresses when returned as undeliverable. *See* Jones v. Flowers, 547 U.S. 220 (2006). The U.S. population is highly mobile today, so class lists compiled for business purposes may be out of date.

Next, it is important to give the class member a reason to *read* the notice. In a world in which junk mail and spam can easily drown out important messages, you may need to press the parties to look beyond the formal legal requirements and find a way to communicate the gist of a class action notice in an attention-getting and understandable format. Rule 23(c)(2)(B) commands that notices "clearly and concisely state in plain, easily understood language" the elements of class action notices. Boilerplate legal language almost never does the job. With help from linguists, communications specialists, a notice expert, and focus groups, the Federal Judicial Center prepared several illustrative notices. See the Class Action Notices Page at www.fjc.gov; there you can also see the "Notice Checklist and Plain Language Guide," which explains important features of the illustrative notices. For a handy booklet on notice principles, see Rust Consulting, Inc. & Kinsella Media, LLC, *Plain Language Primer for Class Action Notice* (undated) (available at http://www.kinsellamedia.com/Knowledge_Sharing.aspx).

The headline of a notice should tell potential class members at a glance why they should—or should not—bother to read the notice; what the notice is about; and what benefit the reader might gain from reading the notice. For example, a notice of an asbestos settlement might start with this headline: "If you have been exposed to an asbestos product, you may have a claim in a proposed class action settlement" and provide enough information to identify potential benefits and options as well as referral to a website or a toll-free telephone number for additional information. The goal is to get class members to read the notice and make an informed decision about exercising any of their rights before being bound by the court's judgment.

A picture of asbestos insulation in a notice may trigger an association in the reader's mind. Those who recognize their own circumstances are likely to read on, contact a website, or call a toll-free telephone number. Nonmembers of the class will have a good reason for adding the notice to the junk mail pile.

A short-form, single-page (or shorter) "summary" notice with headlines can communicate all the required elements of Rule 23 and can tell the reader how to get additional information. Formal case captions should not be used in the summary notice as they are a turn-off to lay people. Legal terms of the settlement tend to confuse lay readers and should be confined to the settlement agreement posted at the website. While "legalese" has been reduced in recent years, much improvement is still needed. *See* Shannon R. Wheatman & Terri R. LeClerq, Majority of Class Action Publication Notices Fail to Satisfy Rule 23 Requirements (2010).

"Plain English" notices may not be enough. Truly global settlements will include class members whose native language is not English and who may not be citizens of an English-speaking country. Note that the FJC's illustrative class action notices on its website include an example of a Spanish language notice. For a recent and colorful example of a global format for class settlements, which is translated into numerous languages and complete with flags for each country, see the settlement administration website for *In re Royal Ahold Securities and Erisa Litigation,* http://www.aholdsettlement.com.

Make sure the notice plan takes into account any cultural and language barriers to notifying class members. For example, the class actions involving assets of Holocaust victims demanded a far-reaching notice campaign to notify the many dispersed Jewish survivors as well as gays, Jehovah's Witnesses, and Romani ("gypsy") migrants. The judge approved a "multifaceted plan" that included "worldwide publication, public relations (i.e., 'earned media'), Internet, and grass roots community outreach." *In re* Holocaust Victims Assets Litigation, 105 F. Supp. 2d 139, 144–45 (E.D.N.Y. 2000). As the judge in the Holocaust victims' class actions was, be alert to cultural differences that might affect the attention recipients will give to the proposed notices. A class of migrant farm workers, for example, might rely on radio more often than urban factory workers would. A class of people challenging searches and seizures as unreasonable might respond differently to official court notices than, say, people who have never been arrested.

G. Claims processes and response handling

If the claims process deters class members from filing claims, the settlement may have less value to the class than the parties assert. Obtaining complete information about claims presented via an unimpeded process will assist you in determining the full value of the settlement and hence its reasonableness, fairness, and adequacy to the class. Avoid imposing unnecessary hurdles on potential claimants.

First, consider whether a claims process is necessary at all. The defendant may already have the data it needs to automatically pay the claims of at least a portion of class members who do not opt out. Necessary claim forms should be as simple and clear as possible and should avoid redundancy. Be careful to avoid claim forms that scare class members away with confusing questions and onerous proof requirements.

If you anticipate or find evidence of a low claims rate, ask counsel whether they have considered alternatives that might enhance the reach of the claims process and tailor it to the characteristics of class members, such as using surveys to determine reasons for nonresponses, improving the clarity of the claims forms, and adding outreach programs. *See* Francis E. McGovern, Distribution of Funds in Class Actions-Claims Administration, 35 J. Corp. L. 123 (2009).

Class counsel should be available to answer class members' questions. The parties commonly agree to seek the appointment of a qualified claims administrator to receive and process claims and handle a toll-free telephone number call center staffed by trained agents. In less complex matters, settlement administrators can place scripted answers to callers' frequently asked questions

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By statute, the Chief Justice of the United States chairs the Center's Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training programs for judges and court staff, including satellite broadcasts, video programs, publications, curriculum packages for in-court training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center's research also contributes substantially to its educational programs. The two divisions work closely with two units of the Director's Office—the Systems Innovations & Development Office and Communications Policy & Design Office—in using print, broadcast, and online media to deliver education and training and to disseminate the results of Center research. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and assesses how to inform federal judicial personnel of developments in international law and other court systems that may affect their work.